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AND

WITH THE JURISDICTION OF

ALSO

CONTAINING

**FORMS OF COURT ROLLS, DEPUTATIONS, AND
COPYHOLD ASSURANCES.**

AND

BY

SERJEANT AT LAW.

EMBRACING ALL THE AUTHORITIES TO THE PRESENT PERIOD,

BY

OF THE INNER TEMPLE, BARRISTER AT LAW.

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A
TREATISE
ON
COPYHOLD TENURE,
&c. &c. &c.

PART THE SECOND.

CHAP. XIX.

Of Customary Freeholds (or Privileged Copyholds) (a).

THE origin and peculiar character of this species of tenure will, the author thinks, be best illustrated by selecting some few passages from the Law Tracts of Sir William Blackstone, title, "Considerations on the question, whether tenants by copy of court roll, according to the custom of the manor, though not at the will of the lord, are freeholders qualified to vote in elections for knights of the shire (b)."

After showing by an able argument, chiefly drawn from the authorities of Bracton, Fleta, and Britton, that estates of this nature are no other than what were well known to our ancient law under the denomination of estates in *privileged villenage* or *villein socage*, and that they were not free lands at the common law, our learned commentator thus proceeds (c) :

"As the villan-socman was distinguished from the pure villein, in that he could not be removed from his estate at the will of the lord, '*a gleba amoveri non debet, quamdiu velit et possit facere debitum servitium*,' so, since this will of the lord is by custom become merely nominal, the same nominal distinction is kept up between the common copyholders and this privileged sort; the words 'at the will of

(a) Vide observations on the Commutation and Enfranchisement Act, 4 & 5 Vict. c. 35; ante, pt. 1, pp. 5, 23, 102, 114, 315, 365, 369, 419, 550, &c.

(b) By the stat. 31 Geo. 2, c. 14, the privilege of voting for knights of the shire was denied to all persons holding estates by copy of court roll. But see reference

to 2 Will. 4, c. 45, s. 19, enabling copyholders for a life or lives, or any larger estate, of the clear yearly value of not less than ten pounds, to vote in the election of a knight or knights of the shire; ante, pt. 1, p. 573, n. (s).

(c) P. 132.

the lord' being still preserved in the copies of the former, and totally omitted in those of the latter; which omission is, indeed, almost the only difference now remaining betwixt them; common copyholders having arrived (by a series of encroachment on their lords) at nearly the same state of enfranchisement which the privileged copyholders alone enjoyed by the antient law.

"Farther to confirm what has been said, Lord Coke, (Cop. s. 32,) (giving an account of these tenures, which he calls copyholds of frank tenure,) observes, that they 'are most usual in antient demesne; though sometimes out of antient demesne we meet with the like sort of copyholds; as in Northamptonshire there are tenants which hold by copy of court roll, and have no other evidence, and yet hold not at the will of the lord.' And so Mr. Kitchin (tit. 'Cop.')(d) says, 'I have seen in the county of Northampton copyholders of frank tenure out of antient demesne; and they have used a writ of right close, and have no other evidence but by copies, according to the custom of the manor; but their copies are not at the will of the lord.' And again (tit. 'Court of Antient Demesne')(e), 'In surrenders of lands in antient demesne of frank tenure, it is not used to say, to hold at the will of the lord in these copies, but to hold according to the custom of the manor, by the services before due; and it is not said there, at the will of the lord.' To these may be added Mr. West, who (Symboleography, S. 603,) first lays down the general definition of a copyholder: 'He which is admitted tenant of any lands or tenements within a manor, that time out of memory of man have been demisable, and demised to such as will take the same in fee, fee tail, for life, years, or at will, according to the custom of the said manor, by copy of court roll of the same manor: and therefore they be called tenants by copy of court roll, because they have no other writings or evidence concerning such their lands and tenements, but only the copies of the rolls of the courts of the manors within which they lie.' And then (S. 605,) he distinguishes the present species of copyholds from others thus: 'In some manors the tenants have the lands granted unto them and their heirs in fee, fee tail, or for life, or years, according to the custom of the manor, and not at the will of the lord, according to the custom; in which case the rolls and copies ought to be made accordingly.' All which proves that the omission of these words in its original was neither fraudulent nor accidental, but is a badge well known to the law as a kind of family distinction between such copyholds as are descended from pure and such as are from privileged villenage."

And after exemplifying his argument by a copy of a court roll in the old chartuary, or collection of ancient deeds and forms in convey-

(d) P. 159 of the author's edit.

(e) P. 194 of the author's edit.

ancing, Sir William Blackstone adds (*f*): "This seems to be convincing evidence that these tenures are of the same nature with Bracton's villan-socage; being chiefly found in antient demesne; the tenants not amenable to the county court; the lands not transferable but only by surrender; not capable of a recovery at common law (*g*), but only by writ of right close, according to the custom of the manor; and though held by copy of court roll, yet not at the will of the lord. Those who imagine them to be of any other species of tenure would do well to inform us what that tenure is, and to support their opinion with authorities equally cogent. Taking this then for proved, that the tenants in question are of the nature of villan-socmen, it will next be our business to show that these estates in villan-socage are not comprised under the denomination of *FreeLands and Tenements* or *Freehold*, within the meaning of the statutes of Henry the Sixth. And here it will be necessary to distinguish two senses of the word *frank-tenement* or *freehold*; the ambiguity of which expression hath occasioned the principal embarrassment to such as have already considered this question. By the word '*freehold*' then is sometimes meant the *interest* or estate itself, which the tenant holds in the land, sometimes the *tenure* by which that estate is holden" (*h*).

Again (*i*), "That such as have a freehold interest only in lands, and not a freehold tenure, are incapable of voting at elections, will appear by considering the consequences of the opposite doctrine; which would be the allowance of all copyholders of the basest kind to have equally votes. For they may likewise have a freehold interest, as Lord Coke has before observed, being generally either tenants for life or in fee; in which case it is held that they have *fee and freehold by custom*, (Kitch. tit 'Cop.');

or, in other words, that the latter, viz. the copyholder in fee, hath a *customary estate of inheritance*, (9 Rep. 75 b:) terms that in their import are at least equivalent to the *customary freehold*, which our courts of law have sometimes applied to the estate of villan-socmen."

And again (*k*): "It hath been before hinted, and must not be dissembled, that our law books and courts of law have frequently (especially of late years) distinguished these estates, in antient demesne and elsewhere, by the name of *customary freeholds*, and have laid it down that they cannot be copyholds unless held at the will of the

(*f*) P. 136.

(*g*) According to the case of *Oliver & Taylor*, 1 Atk. 474, (citing *Baker & Wase*, in Lord Macclesfield's time,) a recovery might have been suffered in the Court of Common Pleas of customary freeholds passing by surrender in a borough court.

But now see 3 & 4 Will. 4, c. 74, s. 2.

Vide also ante, pt. 1, p. 68 et seq.

(*h*) Vide ante, pt. 1, tit. "Pleading," &c.; p. 510; ib. n. (*s*).

(*i*) P. 138.

(*k*) P. 144.

lord (Cro. Car. 229 ; 2 Vent. 143 ; Carth. 432 ; Lord Raym. 1225) : and also that a freehold may be surrendered by custom in court, without the will of the lord ; and that the alienee shall not be tenant at will, but shall have the inheritance (Fitz. Abr. tit 'Corone,' 310 ; 'Custom,' 12 ; Bro. Abr. tit. 'Custom,' 2, 17 ; Tenant per Copie, 22 ; 9 Rep. 76 ; Co. Litt. 59 b ; 1 Roll. Abr. 562). But in all these cases the terms 'freehold and freeholder' are put in opposition to '*common* copyhold and copyholder,' to *un mere copyholder*, as Brook expresses it (Ten. per Copie, 22), or such as are sprung from the pure villenage of our antient tenures : for it would be absurd to say that lands holden by copy are not copyholds in *any* sense. The truth is, that these lands are of such an amphibious nature, that, when compared with mere copyholds, they may with sufficient propriety be called freeholds ; and, when compared with absolute freeholds, they may with equal or greater propriety be denominated copyholds. We do not contend that they are copyholds of base tenure, subject to *all* the servile badges of pure villenage ; but copyholds of a privileged tenure, retaining some badges of servility and not others ; or rather (negatively) that they are not purely and absolutely freeholds. Whereas the question in all the adjudged cases above cited has been, whether *common* copyhold or not ; and it has been very justly determined that this species of lands is not common copyhold ; but it does not therefore follow that it is purely and simply freehold, being on the contrary usually distinguished into a third intermediate state, under the mixed and complicated denominations of customary freehold, free copyhold, or, as Lord Coke expresses it (Cop. s. 32), copyhold of frank tenure."

"It perhaps may be also objected, that Lord Coke (in the passage just cited) declares, that in these copyholds of frank tenure the *freehold* resteth in the tenant, and not in the lord (*l*). But this word 'freehold' must there be understood to denote the *interest*, and not the *tenure* of the land (*m*). And this depends upon a nicety in the modern law, derived from a very substantial and solid reason in the old law. When lands were in fact held in pure villenage, the tenant was really tenant at the lord's will, and therefore the law did not allow him to have the freehold of the land, but declared it to remain in the lord ; for tenant at will hath hardly any interest at all, much less a freehold interest. Afterwards, when these villeins became mo-

(*l*) It is not so, the freehold is in the lord, as we shall presently see ; but there is much *dicta* for Lord Coke's position. Vide N. 1, Co. Lit. 59 b ; Hughes v. Harrys, Cro. Car. 229 ; Rogers v. Bradly, 2 Vent. 143 ; Gale v. Noble, Carth. 432 ;

5 East, 66, 77, in Roe d. Conolly v. Vernon and Vyse ; 7 East, 304, in Doe & Danvers ; Mann. Ex. Pr. 359 ; Bingham v. Woodgate, post, p. 577.

(*m*) Ante, p. 563, n. (*h*).

dern copyholders, and had acquired by custom a sure and indefeasible estate for life or in fee, but yet continued to be styled in their copies tenants at the will of the lord, (the omission of which, in their state of villenage, would have been a manumission of their persons, *Mirr.* c. 2, s. 28, *Litt.* s. 204—206,) the law still supposed it an absurdity to allow that such as were thus nominally tenants at will could have any freehold interest, and therefore continued, and still continues, to determine that the freehold of lands so holden abides in the lord of the manor, and not in the tenant, though he *really holds* to him and his heirs for ever, since he is also *said to hold* at another's will. But as to these copyholders of free or privileged tenure the case is otherwise. They do not, nor ever did, hold at the lord's will, either in fact or nominally. There is therefore no absurdity in allowing them capable of enjoying a freehold interest; and on that account the law doth not suppose the freehold of these lands to rest in the lord of whom they are holden, but in the tenants themselves (*n*). Bracton indeed makes a distinction (*l.* 2, c. 8, s. 2,) between *native* villan-socmen, who are born within antient demesne, and such as are *adventitious*, who hold by compact and convention with the lord; apprehending that, though the latter may have a freehold interest, the former cannot. 'Compact and the consent of the lord may make the latter's estate a freehold:' and again, 'in the person of one it shall be freehold, in the person of the other villenage.' And yet, granting their *interest* to be freehold, it does not follow that their *tenure* is free; for their services, though certain, were not free but villan services; and therefore Bracton in the same section declares, that 'although the service be certain from a villan socage, yet the tenant shall not therefore have a freehold.'"

"2. A second argument to show that these tenures in villan-socage are not free tenures, will arise from their method of transfer or alienation, which was before remarked, namely, by surrender into the hands of the lord, and not by the usual conveyances by deed at the common law. Of these, feoffment with livery of seizin is still the principal, and was the only original conveyance by which a freehold could pass, till the statute of uses in the reign of Henry the Eighth."

And after adducing as a third ground of argument, that tenants in villan-socage are not free tenants, their inability to sue or be sued for their lands, or of course to levy a fine or suffer a recovery in the king's courts of common law (*o*), but only in the Court Baron of the

(*n*) This, as the author has before noticed, is an erroneous supposition; ante, p. 564, n. (*l*); et vide post.

(*o*) Ante, p. 563, n. (*g*). Note—"A

fine levied or recovery had of lands in the king's court proves them to be frank-fee;" Old Nat. Brev. tit. "*Briefe de Recto Clauso*;" F. N. B. 13.

lord, by the peculiar writ of right close (*p*), the learned author further observes (*q*),—" 4. A fourth argument to prove that this tenure cannot be a free tenure is this; that though the lands be not held at the will of the lord, and therefore the tenant cannot nor ever could be ousted at the lord's pleasure, as was formerly the case in common copyholds; yet still the lands are liable to forfeiture, and the tenant may be ousted by his own default for the non-payment and non-performance of his rents and services; which no free tenant, *per liberum servitium*, could be by the common law: for the writ of *cessavit* (by which lands may now be recovered against a freeholder for such default for two years together), was first given by the statute of Gloucester, 6 Ed. I., before which the lords had no remedy but that of distress for subtraction of freehold services: and at present this writ of *cessavit* may be defeated, even pending the suit, by tender of amends to the lord. But it is the very condition of the tenure in question, that the lands be holden only so long as the stipulated service is performed; '*quamdiu velint et possint facere debitum servitium, et solvere debitas pensiones*,' as is the doctrine of Bracton, Britton, and the rest above cited. So too the lord may seize their lands for alienation contrary to the custom; (Bro. Abr. tit. "Custom," 17;) and it is not improbable that he has likewise the power of seizing, if the heir comes not in to be admitted in court at the death of the ancestor, and for other causes, according to the peculiar customs of each respective manor (*r*). Now it is impossible that tenants thus dependent on their lords, who may by law take the advantage of sudden forfeitures and destroy their estates, can or ever could be ranked in the same class with absolute freeholders, whose estates are not liable to be defeated upon any such servile conditions."

And having relied, as a fifth ground of argument against these tenants being freeholders, on the circumstances of their not being members of the county court, where all elections by freeholders are directed to be made, and their not being contributory to the wages of the knights of the shire, which were formerly raised by their constituents to defray their expenses in parliament, our able commentator thus concludes (*s*):—" 6. The last argument that shall be offered upon this head is a very concise one, and is this; that however the lawyers may at times have denominated these tenures a sort of base species of freehold, in contradistinction to mere copyholds, yet the law in the main regards them as being properly *copyhold* and not

(*p*) Ante, pp. 562, 563. Copyholders in ancient demesne cannot maintain a writ of right close; vide post, tit. "Ancient Demesne;" and reference there to the act 3 & 4 Will. 4, c. 27, by which the

writ of right close was abolished from the 31st Dec. 1834.

(*q*) P. 153.

(*r*) But see *Gale v. Noble*, Carth. 432.

(*s*) P. 159.

freehold tenures; else they could not have subsisted to this day. For they must otherwise have been involved in the general fate of the rest of our antient tenures, when by the statute of 12 Car. II. c. 24, they all were abolished and reduced to free and common socage;—except only tenures in *frankalmoign* (*t*), and tenures by copy of court-roll (*u*). Free and common socage these tenures cannot be; their surrenders and admittances, their frequent fines for alienation, and peculiar paths of descent, (from which two last, as not being their universal properties, no argument hath been hitherto drawn), their forfeitures, recoveries and privileges, (still regulated by particular custom in derogation of the common law,) most clearly evince the contrary. Nor will it be pretended that they are of the nature of *frankalmoign*. There remains therefore no other choice; tenures by copy of court-roll they must be. This is their indelible character: it is to this they owe their present existence, and survival of other tenures. The statute has reduced all manner of lay *freeholds* to one and the same level, of free and common socage: but *copyholds* remain as they were, as various, as singular, and as servile in their tenure as ever. These tenures therefore not being free and common socage, must necessarily remain *copyholds*, as entirely as in the time of Bracton; of a superior order, indeed, and distinguished by some advantages, (formerly real, now nominal only,) over the baser sort; but still far short of the dignity, the immunities, and the independence of that *freehold* tenure, which for more than three hundred years has constituted an elector of knights of the shire to serve in the *English parliament*?

The above perspicuous, classical, and highly interesting definition of the tenure now under our consideration, would, the author submits, fully justify him in proceeding, without any introductory remarks, to a statement of some few cases which appear to have established that the freehold is in the lord in *privileged* copyholds, passing either by surrender, or by deed of grant or bargain and sale, and admittance, as well as in *ordinary* copyholds (*x*).

(*t*) The tenure by which all ecclesiastical persons and corporations, and lay impropriators, now hold their lands and tithes, and who even as to such tithes have a freehold interest, though issuing out of copyhold land, being a distinct inheritance. See stat. 16 & 17 Car. 2, c. 1; 10 Ann. c. 23; 1 Bl. Tr. p. 115, 116, 117; Co. Lit. 100 b, n. (1).

(*u*) But part of the honorary services in *grand serjeanty* are also retained by

the statute of 12 Car. 2; Co. Lit. 108 a, n. (1).

(*x*) Probably it would be held that customary lands not being *within* and *parcel* of the manor, but being *held of* the manor (as in ancient demesne tenure) form an exception to the rule, and that the freehold of those lands is presumptively in the tenant; post, p. 570, n. (*p*); see note (*c*) to *Le Fleming v. Simpson*, 1 Mann. & Ry. 269.

But the author thinks it right (with reference to the immediate subject of the above extracts from the Law Tracts of Mr. Justice Blackstone) to notice, that customary freeholders, although holding by copy of court-roll, were in one instance allowed to vote for knights of the shire (*y*), even after the statute of 31 Geo. II. c. 14 (*z*); and the right of customary freeholders, not holding by copy of court-roll, to vote at county elections, has been considered as less doubtful (*a*). Yet as the statute of 18 Geo. II. c. 18, enacted, that no person should vote in any election of a knight or knights of the shire without having a freehold estate in the county for which he voted, of the *clear* yearly value of forty shillings; and since it has been determined that the *freehold* of these estates, of such at least as are within and *parcel* of the manor, is in the lord, even when they pass (as frequently is the case) by *deed* of grant or bargain and sale and admittance, and are not held at the will of the lord, the author agrees with Mr. Serjeant Heywood (*b*) in supposing that these tenants had formerly (*c*) no right to vote at county elections.

The author wishes also to remind the reader that there is a difference in the mode of pleading between pure copyholds, and those of a privileged nature (denominated customary freeholds) (*d*), arising principally out of the circumstance of the former being held not only *secundum consuetudinem manerii*, but also *ad voluntatem domini*, whereas the latter are held according to the custom of the manor, but not at the lord's will (*e*). With this exception, however (*f*), it would appear there are no grounds of distinction between ordinary and privileged copyholds, when the latter are held by *copy of court-roll*, and pass by *surrender* and admittance (*g*), although not held at the will

(*y*) Contest for Leicestershire, 1770, Heyw. C. 81.

(*z*) Ante, p. 561, n. (*b*).

(*a*) Gloucestershire case, Heyw. C. 82; Male, 134, 285; Rogers, 160, n.

(*b*) Heyw. C. 85.

(*c*) *i. e.* prior to 2 Will. 4, c. 45; ante, pt. 1, p. 557, n. (*z*).

(*d*) Ante, pt. 1, pp. 511, 513; vide also Burrell v. Dodd, 3 Bos. & Pul. 378; Leigh v. Williamson, 9 Wentw. 123.

For an explanation of the term "conventional" or customary hereditary leasehold tenure, and which exists in the assessionable manors of the Duchy of Cornwall, see the case of Ley v. Ley, 2 Mann. & Gr. 780; ante, pt. 1, tit. "Devise," p. 261.

(*e*) Hughs v. Harrys, Cro. Car. 229; Gale v. Noble, Carth. 432; Rogers v. Bradly, 2 Vent. 144; Hill v. Bolton, Lutw. 1171; Crouther v. Oldfeild, ib. 125; S. C. Salk. 365; S. C. 2 Ld. Raym. 1225; S. C. 6 Mod. 19; 11 Mod. 53.

(*f*) And see as to the writ of *Right Close*, and of *Monstraverunt*, post, tit. "Ancient Demesne."

(*g*) In many manors customary estates pass by deed or surrender, but the custom sometimes requires that the grantee should be admitted in the lifetime of the grantor, which was held to be a good custom in Fenn & Mariott, Willes, 430; ante, pt. 1, p. 24; and see Perryman's case, 5 Co. 84.

The reader is reminded that a wife was equally excluded from dower of a trust

of the lord (*h*): and that it was a settled rule, that the equitable fee of customary freeholds, even when it was acquired by way of resulting trust, and although the custom of the manor was not to recognize an alienation by will, nor to permit any trusts to appear upon the court-rolls, was devisable (*i*).

It is observable, however, that the case of *Hussey v. Grills* (*h*) is an authority that a devise of an equitable interest in customary freeholds, where there was no custom to surrender the legal interest to the use of a will, or where the customary interest was not devisable, must have been attested according to the statute of frauds: and in another case (*l*) the court would appear to have felt a distinction, as to the relevancy of that statute, between a devise of customary lands passing by deed and admittance, and a devise of the like lands passing by surrender and admittance. But as it would seem to be a recognized principle that a customary freeholder has no *freehold* interest, in the strict legal sense of that word, even when the estate passes by deed of grant or bargain and sale and admittance, the court must be presumed to have been influenced in the above case of *Hussey & Grills*, (supposing that case to have been rightly decided,) by the circumstance of the will alone being operative in a devise of customary freeholds passing by deed of grant or bargain and sale and admittance, whereas the will was to be deemed declaratory only of the uses of the surrender, when lands of that tenure passed by *surrender* and admittance, the same as in a devise of ordinary copyholds.

This distinction is deducible from the words of Lord Hardwicke, who, in his judgment in that case, said, "There is no evidence that there can be in this manor a surrender of a customary freehold to the use of a will. Agreed, there never was any such. The foundation of the determinations as to copyholds is that the party may dispose by surrender and will. As there is no method of passing the legal estate of these customary freeholds in this way, there is no reason to hold them out of the statute of frauds: and as the legal estate is not, so is not the trust."

In the case of *Willan v. Lancaster* (*m*) it appeared that the cus-

estate in privileged copyholds or customary freeholds as in ordinary copyholds; *Godwin v. Winsmore*, 2 Atk. 526; *Forder v. Wade*, 4 Bro. C. C. 521; ante, pt. 1, p. 75.

(*h*) The Court of B. R. held in *Doe & Danvers*, 7 East, 299, that a right of entry in customary freeholds, passing by *surrender* and admittance, but not held at the will of the lord, was not tolled by descent. And now by 3 & 4 Will. 4, c. 27, s. 39, no descent, discontinuance or warranty,

will bar a right of entry for the recovery of any land; see pt. 1, p. 47.

(*i*) *Wilson v. Dent*, 3 Sim. 385; and see *Wardell v. Wardell*, 3 Bro. C. C. 116. Vide also pt. 1, tit. "Trust Estates," p. 407, n. (*g*); post, p. 576, n. (*h*).

(*k*) Amb. 299; ante, pt. 1, p. 332, n.

(*l*) *Doe v. Danvers*, 7 East, 299.

(*m*) 3 Russ. 108. See the reference to the late statute of wills, (1 Vict. c. 26), post, p. 576, n. (*h*).

tomary freehold lands held of the manor were not devisable, but were transferred by deed and admittance, the operative words of the deed being "bargain, sell and surrender." The particular lands were vested in a trustee, in trust for the testator for life, and after his decease for such purposes as he should appoint by deed, or by will or codicil, to be by him *legally executed*; and the question was, whether a codicil not executed according to the statute of frauds would pass the equitable interest.

The case was argued merely with reference to the question whether the equitable interest of a customary freehold would or would not pass by a will not executed according to the statute of frauds: and Lord Gifford, M. R., desired that the question might be considered with reference to the construction to be put upon the words "to be by him legally executed," by which the testator might have meant "executed according to the statute of frauds." The case was afterwards argued before Sir John Copley, M. R., and the report merely states that his Honor was of opinion that the customary lands did not pass by the codicil.

It may be proper also to premise that the author has not discovered any case in which the question has arisen, whether there may be a general occupant of customary freehold lands: but as an occupancy is for supplying a freehold (*n*), and as the freehold remains in the lord in *privileged* as well as in *ordinary* copyholds, the former would seem, with reference to the law of occupancy, to stand on the same footing as the latter, and to be subject to special, but not to general occupancy (*o*).

The author has been equally unsuccessful in his endeavours to discover some judicial authority, or at least some respectable dicta, to prove the perfect accordance, or to establish a clear distinction between privileged and ordinary copyholds, with regard to the operation of the writ of *elegit*, and from which the latter were clearly exempt (*p*).

(*n*) Per Holt, C. J., in *Smartle v. Penhallow*, 1 Salk. 189.

(*o*) Ante, pt. 1, pp. 50, 51, 89. And see s. 6 of 1 Vict. c. 26, by which the provisions of 29 Car. 2, c. 3, s. 12, and 14 Geo. 2, c. 20, s. 9, are made applicable to customaryholds, held *pur autre vie*, when there is no special occupant; ante, pt. 1, p. 51.

(*p*) Ante, pt. 1, pp. 47, 48, 86.

Since the second edition of this work was published, it has been suggested that customary freeholds were liable to be extended at the suit of a judgment creditor, under

the writ of *elegit*; see *Mann. Excheq. Prac.* p. 43. Sed qu.? unless where the lands were not within and *parcel* of, but *held* of the manor, the freehold then being vested in the tenant; ante, p. 567, n. (*x*). In p. 362, Mr. Manning states that customary freeholds in ancient demesne were extendible, for which he cites *Cox & Barnsly*, Hob. 47, and other authorities. And see *Martin v. Wilks*, Mo. 211; 2 Inst. 397. But it is observable that in the case of lands of ancient demesne tenure, the freehold is in the tenant. See 2 Inst. 325; *infra*, n. (*r*).

The chief inducement to the decision that ordinary copyholds were not included in the statute of 13 Ed. I. c. 18, appears to have been the possible prejudice which the lord might have sustained by the introduction of a new tenant without his consent (*q*); and this principle would seem to have applied equally to customary freeholds (or privileged copyholds), although not held at the will of the lord, as the lord's assent to the change of tenancy was implied in the admittance, which (however unsubstantial the act may be considered at the present day) is, the author believes, an obligation invariably imposed upon the alienation of customary freeholds, although passing by deed of bargain and sale, or other act of assurance not applicable to ordinary copyholds.

It might also have been difficult to establish a distinction between privileged and ordinary copyholds, in the construction of the act of 13 Ed. I. of *elegit*, consistent with the rule, that the freehold is never taken out of the lord in lands of the one tenure or the other, and which would seem to have excluded the sheriff from any jurisdiction over customary freeholds, equally as in the case of ordinary copyholds (*r*).

But the necessity of an admittance by the lord of the manor, in order to perfect the conveyance of customary freeholds, and the absence of any actual freehold interest in the tenant, would appear to have been the only grounds favourable to the opinion, that lands of customary freehold tenure passing by deed, and not held at the will of the lord, were not affected by an extent:—and the exemption was clearly not to be maintained on the ground of any right which the tenants of such lands might have to implead and be impleaded in the court of the lord of the manor *exclusively*; for the sheriff upon an *elegit*

(*q*) Ante, pt. 1, p. 81.

(*r*) The case of an ejectment is an exception to this rule, but it is to be recollected that an ejectment is, in principle, an action of trespass, founded on a common law title; and also that the party bringing the ejectment must first procure admittance to the estate in question, and which he could enforce by showing a colourable right.

N. B. By sect. 11 of 1 & 2 Vict. c. 110, the sheriff is directed to deliver execution, upon an ELEGIT issuing, of all the lands of the debtor, including lands of *copyhold* or *customary* tenure, and lands over which he has a disposing power for his own benefit, in like manner as the sheriff could previously to that act have delivered execution of a moiety of lands under a writ

of *elegit*. But it is provided by the same section, that the party to whom *copyhold* or *customary* lands should be delivered in execution, should render and perform the payments and services due to the lord, and be entitled to hold the lands until the amount of such payments, and the value of such services, as well as the amount of the judgments, should have been levied; ante, pt. 1, p. 47.

And the reader is reminded that customaryholds and copyholds are within the late statute of limitations, 3 & 4 Will. 4, c. 27; ante, pt. 1, p. 82, n. (*u*); and also that customaryholds and copyholds, as well as freeholds, are made assets for specialty debts by 3 & 4 Will. 4, c. 104, ante, pt. 1, p. 48, 90, n. (*l*), 540, n. (*t*). Vide extract from the act in the Appendix.

delivers only a *legal* and not an *actual* possession (*s*); and to obtain an actual possession the plaintiff must proceed by ejectment. A further argument to be urged against the latter ground of exemption (and which may also be urged against the supposition of any such privilege resulting from the freehold interest never having been taken out of the lord) is, that lands of the tenure of ancient demesne are extendible, although ancient demesne is a good plea where the freehold is in question (*t*); for a tenant by *elegit* has but a chattel interest (*u*); and by this execution, neither the freehold nor the possession is removed (*x*). It must not be forgotten, however, that although the *actual* possession is not removed by the sheriff's entry and delivery of possession under an *elegit*, yet that the *legal* possession so acquired lays the foundation of an ejectment to recover the actual possession; and also that tenants by *elegit* had the same remedy by assise as freeholders were entitled to (*y*).

The author will now proceed to notice the cases to which he has before adverted, deciding, as he submits, that the freehold is vested in the lord and not in the tenant in all customary freeholds, whether passing by surrender, or by deed of grant, or bargain and sale, and admittance (*z*).

In the case of *Stephenson v. Hill* (*a*), which was an action on the statute of 2 Edw. VI. c. 13, for the payment of tithes of corn and grain, and wherein the question was whether the defendant could set up any prescription, which would by virtue of the statute of 31 Hen. VIII. exempt him from payment of tithe, or (as Lord Mansfield put it) whether customary freeholders can in point of law prescribe in *non decimando*, Lord Mansfield and Mr. Justice Denison said it was a settled point that the freehold is in the lord; and Lord Mansfield

(*s*) Saunders, 69, n. (3); 2 Cru. Dig. 73; Alden's case, 5 Co. 105.

(*t*) Post, tit. "Ancient Demesne."

(*u*) Co. Lit. 42 a.

(*x*) *Ib.*; Coke v. Barnsley, 1 Brownl. 234.

(*y*) 2 Inst. 396. Note, the stat. of Westm. 2, c. 18, gave such tenants a writ of *novel disseisin*, if ejected, and afterwards a writ of *re-disseisin*; *ib.* 394, 396; F. N. B. 189, I; and see Co. Lit. 154 a; and n. 11, *ib.*

(*z*) But if by the custom a feoffment should be requisite, as well as a surrender, the author apprehends that the freehold would be considered to be in the tenant. It was said argo. in *Stephenson v. Hill*,

infra, that these customary estates in the north never pass by *feoffment*, but by grant and admittance.

N. B. A custom that all feoffments of *freehold* lands within the manor must be presented at the Court Baron, has been adjudged to be reasonable; Perryman's case, 5 Co. 84. It was objected in that case that "to say that the custom of the manor should divest an estate of freehold and inheritance vested by solemn livery, would be against law." To which it was answered and resolved, that "in the case at bar when the feoffment is presented according to the custom, then it takes effect by force of the livery before."

(*a*) 3 Burr. 1278.

added, "This is rather stronger than the case of copyholds; for copyholders had acquired a permanent estate in their lands before these persons had done so."

The case of *Doe d. Reay v. Huntington and others* (b) was this:—the lord by his deed, dated subsequently to the stat. of *quia emptores*, 18 Ed. I., granted and confirmed to the tenant his customary or tenant right estate (c), freed and discharged of all rents, customs and services, (*excepting a rent of one penny yearly, and suit of court with the service incident thereto, and all royalties, escheats, &c.,*) belonging to the seignior, so far as might consist with and not be prejudicial to the immunities thereby granted;—and Lord Ellenborough, in delivering the opinion of the Court of King's Bench upon a case reserved at the trial, in which the questions were, under what class of tenure the estate was ranged before the above grant, and secondly, the effect of that deed as it respected the tenant's right to devise the estate, gave his full sanction to the above previous decisions, that in the case of customary tenant-right estates, although alienable by deed of bargain and sale and admittance, the freehold is in the lord, by the following observations:—"These customary estates known by the denomination of *tenant-right* are peculiar to the northern parts of England, in which border-services against Scotland were anciently

(b) 4 East, 271.

(c) It appears by the report that the tenement in question was one of the customary or tenant-right estates *within the manor, and holden of the lord* by certain ancient customary rents and services, descendible from ancestor to heir according to a customary mode, differing in some respects from the rule of descent at common law, and not devisable by will, either directly or by means of a surrender; but the land appears not to have been holden at the will of the lord.

In some manors in the north of England, every tenant is admitted by the lord for the time being, and the tenant by virtue of such admittance holds during the joint lives of himself and the admitting lord; *Duke of Somerset v. France*, 1 Stra. 654; *Fortesc.* 41; ante, pt. 1, p. 316.

Under such an admission the heir acquires seizin by entry without admittance, if the land is customaryhold of inheritance, but not if the estate is only for the joint lives of the tenant and the lord, with

a tenant right of renewal; *Doe & Clift*, 12 Adol. & Ell. 566; ante, pt. 1, pp. 27, 317.

At the end of the form of the pleadings in *Leigh v. Williamson*, (in trespass,) 9 Wentw. 129, (in which the land was stated to be of customary freehold tenure, descendible from ancestor to heir, and devisable by custom,) there is the following note: "The books are very barren on this species of tenure, but it certainly arose in the northern court [coast], near Scotland, for the defence of the borders; therefore in its creation unlikely even to be descendible, much less devisable; but the descent is now generally established, and perhaps the devisability also in this manor: and I am informed by a gentleman of the north, that many of these estates, to this day, are not devisable, at least not without leave of the lord, and seemingly the defendant relies upon this. If the licence of the lord is necessary, it should be stated in the replication.

"A. Dawson."

performed, before the union of England and Scotland under the same sovereign : and although these appear to have many qualities and incidents which do not properly and ordinarily belong to villenage tenure, either pure or privileged, (and out of one or other of these species of villenage all copyhold is derived), and also have some which savour more of military tenure by *escuage uncertain*, which, according to Littleton, sect. 99, is *knight's service*; and although they seem to want some of the characteristic qualities and circumstances which are considered as distinguishing this species of tenure, viz. the being holden at the will of the lord, and also the usual evidence of title by copy of court-roll, and are alienable also, contrary to the usual mode by which copyholds are aliened, viz. by deed and admittance thereon (if indeed they could be immemorially aliened at all by the particular species of deed stated in the case, viz. a bargain and sale, which at common law could only have transferred the use); I say, notwithstanding all these anomalous circumstances, it seems to be now so far settled in courts of law that these customary tenant-right estates are not freehold, but that they in effect fall within the same consideration as copyholds, that the quality of their tenure in this respect cannot properly any longer be drawn into question." His lordship further observed, that by the deed of confirmation, the tenement had become frank fee, *i. e.* holden in free and common socage, and devisable by the statute of wills : that the words "freed, &c." amounted to a release of the services, &c. not excepted, and that the case bore a strong analogy to the tenure of ancient demesne; and to show that the customary qualities were extinguished by the deed, his lordship cited *Griffith v. Clarke (d)*, which was the case of a release by a fine, after the statute of *quia emptores*, "*de omnibus servitiis et consuetudinibus, salvo servitiis infra scriptis, viz. pro unâ virgatâ terræ 2. s. rent sect. curiæ et relevio*," and the release was *de uno messuagio et unâ virgatâ terræ*; and the court held the custom of ancient demesne extinguished by the release, but that the rent, suit of court, and relief continued by the saving, as the remnant of the ancient seignior. Lord Ellenborough also ruled, that the immediate customs of the land in question had become extinguished, and the land of course devisable, the same as any other socage land under the statute of wills, and consequently that the defendants, who were devisees, were entitled to it under the devise made to them.

In the manor of Irthington in Cumberland, and other the manors parcel of the barony of Gilsland, the estates pass by customary con-

(d) Mo. 143; and also 49 Ed. 3, 7, per Belknap, C. J.; Bro. Abr. tit. "Ancient Demesne," pl. 8; ib. "Confirmation," pl.

5; 9 Co. 140; vide post, tit. "Ancient Demesne."

veyance of bargain and sale, the operative words being grant, bargain, sell, alien and surrender all, &c. the customary property of, &c. held of the lord as parcel of the manor of A., parcel of the barony of Gilsland, habendum to the alienee, his heirs and assigns for ever, at the will of the lord, according to the custom of the manor; with the licence of the lord indorsed thereon by the steward (e): and in all these manors the freehold of the customary tenements is in the lord (f).

Another case of peculiar interest connected with this subject is *Doe d. Cook and Wife v. Danvers* (g). The estate appeared, by a case reserved at the trial of ejectment for the opinion of the Court of King's Bench, to be holden of the manor of Stebunheath, otherwise Stepney, in Middlesex, by copy of court roll, (but not *ad voluntatem domini*), and to pass by surrender and admittance, and to have been leased under a previous licence from the lord; and it also appeared to have been surrendered by the late owner to the uses of her will: and the

(e) The 92 sect. of the Commutation and Enfranchisement Act, 4 & 5 Vict. c. 35, recites, that by the custom of certain manors, the lords are restrained from granting licences to their tenants to alien their ancient tenements otherwise than by entireties, and enacts that it shall be lawful for any such tenant, with the licence of the lord or the steward, (which licence the lord is thereby authorized to give or to empower the steward to give by any writing under his hand, to be afterwards entered upon the rolls of the manor,) to dispose of his ancient tenement, or any part thereof, by devise, sale, exchange, or mortgage, *in such parcel or parcels* as he shall think proper, but subject to the payment of such portion or portions of the yearly customary lord's rent as shall be set and apportioned by the lord, or the steward, or his deputy; and that such parcel or parcels (except so far as the tenure or descent may be affected by the act) shall be held and be conveyed as the original tenement has by custom been held and conveyed; ante, pt. 1, p. 114, n. (n); and see the act in the Appendix.

(f) *Doe d. Earl of Carlisle v. Towns*, 2 Barn. & Adolp. 585; ante, pt. 1, p. 283. A court is held twice a year for the manors within the above barony, at which the tenants are called by the roll, and proclamations are made, in case of death or alienation, for the heirs or new tenants to appear;

and on appearance the names of such tenants are entered on a roll by the steward, who receives a fee of one shilling from each tenant, and a further fee of five shillings for the indorsement of a licence of alienation. In the above case of *Doe & Towns*, proclamation had been made for the defendant to be admitted to two customary tenements as the heir of J. T., and the steward tendered to the defendant a written admittance on a stamp, which he refused to accept, but was willing to have his name inrolled and to pay the customary fee of one shilling. Upon such refusal the lord seized quousque. But the court of B. R. held that such an inrolment was not an admittance within the provisions of the stamp act of 55 Geo. 3, c. 184, but that on an alienation the estate passed by the customary conveyance, and that on a descent, the heir became entitled as in the case of freehold property. Vide also *Graham v. Jackson*, Hil. T. 1845, 9 Jur. 275.

In some manors in Cumberland the customary freehold estates pass by deed of bargain and sale presented and inrolled at the manor house, *with surrender* and admittance; see *Doe d. Danson v. Parke*, 4 Adol. & Ell. 816. Vide the case of *The Queen v. The Lord of the Manor of Ingleton*, ante, pt. 1, tit. "Mandamus," p. 531, n.

(g) 7 East, 299.

court ruled, that it being so circumstanced, whether held *at the will of the lord* or not, *the freehold was in the lord* and not in the tenant; and that with respect to all the questions arising in the case, it was to be taken and considered as copyhold.

The court had entertained a doubt in the above case how far the will could be considered a will in writing under the terms of the surrender, and whether, under the 7th and 9th sections of the statute of frauds, the will must not be signed by the party, as thrown out by Lord Kenyon in *Doe d. Tempest v. Dancer* (1796), and according to what is reported to have been said by Lord Hardwicke in *Tuffnell & Page*, "that when such will was in writing, and signed by the party, that was sufficient." But they now expressed themselves satisfied that a will to direct the uses of a surrender of a copyhold, or of a customary estate *passing by surrender*, was not within the statute of frauds, and need not be signed, unless such signature was required by the terms of the surrender to the uses of the will; and added, that although they thought it would have been the sounder construction to have holden, that copyholds were comprised in the general words of the 5th and 6th sections of the act, "all devises and bequests of any lands or tenements;" yet it was a settled point, that the lands passed by the surrender and will taken together, as if the devisee's name was inserted in the surrender, and that they did not pass by the will (*h*); that the 7th section, requiring declarations or mentions of trusts of land to be in writing, signed by the party enabled to declare the trust, or by his will, and the 9th section, requiring all grants and assignments of trusts to be also in writing, signed by the party granting or assigning, or by such last will or devise, did not extend to surrenders of copyhold or customary estates, but referred only to such will as the statute recognized, viz. a will attested by three or four witnesses,—a will of such lands not being a creation or declaration,—or a grant or assignment of a trust (*i*). And as to the question which had arisen, whether the will stated in the case was to be considered a will in writing, the court referring to 1 And. 34, 3 Leo. 79, 2 Keb. 128, *Carey & Askew*, 2 Bro. C. C., and a note to *Wagstaff v. Wagstaff*, 2 P. W. 259 a (*k*), also ruled, that the instrument in question,

(*h*) The reader's particular attention is here called to the act of 1 Vict. c. 26, "For the Amendment of the Law with respect to Wills," in the Appendix, by which the several statutes of wills, including so much of the statute of frauds as related to devises of land, were repealed, and all property was made devisable by will executed and attested as required by that act; and the power was expressly ex-

tended to "all real estate of the nature of customary freehold or tenant right, or customary or copyhold," without a surrender to will, and even before admittance, and to such lands as could not have been devised prior to that act; sect. 3; ante, pt. 1; p. 233, n. (*e*).

(*i*) Ante, pt. 1, p. 88.

(*k*) Ante, pt. 1, p. 233 et seq.

which was the written instructions for a will disposing of the above customary estate to the lessor of the plaintiff, and which had been pronounced as the will of the testator by the prerogative court, was a will in writing within the terms of the surrender; and judgment was therefore given for the plaintiff (*l*).

It is proper, however, to apprise the reader, that in the case of *Bingham v. Woodgate* (*m*), (in which the principal question was, whether the effect of a union of the fee of customary tenements with the estate for life of the lord was an absolute extinguishment of the customary interest, or only a suspension of it during the life of the lord (*n*),) the Master of the Rolls held, that as the custom of the manor required a bargain and sale, as well as a surrender and admittance, to pass the customary tenements which were the subject of the suit, they were plainly freehold, (or, in other words, that the freehold was in the tenant, and not in the lord.) And his Honor added, "The necessity of surrender and admittance is probably a remnant of the ancient tenure of villenage, and does not affect the freehold nature of the interest, although it prevents the customary tenement from being strictly of freehold tenure—a distinction which is well established." But, with great deference to so high an authority, the author would submit, that, as the form of the deed of conveyance was not calculated to pass a freehold interest either at common law or under the statute of uses, the above case is not distinguishable from that of *Doe & Huntington*; and that, consistently with the opinion expressed by the court in the last mentioned case, and in *Stephenson & Hill* (*o*), and *Burrell & Dodd* (*p*), the customary tenements in the principal case "fell within the same consideration as copyholds," the freehold interest therefore being in the lord, and not in the tenant (*q*).

In concluding the observations on the qualities of customary freehold tenure, it is proper to notice that the Court of Common Pleas,

(*l*) Vide the act of 55 Geo. 3, c. 192, in the Appendix, and the reference to it ante, p. 1, p. 211 et seq., dispensing, in ordinary cases, with a surrender to will. And note, that in *Doe d. Edmunds v. Llewellyn*, 2 Cr. Mee. & Ros. 503, lands held by copy of court roll according to the custom of the manor, *though not at the will of the lord*, were held to be within the provisions of that statute. Note also, that the act of 1 Vict. c. 26, repealed the above-mentioned act of 55 Geo. 3, and re-enacted the substance of it.

(*m*) 1 Russ. & Myl. 32; S. C. (called

also *Hudlestone v. Corbett*.) 1 Taml. 183. And see 3 Russ. 112, argo. in *Willan & Lancaster*.

(*n*) Vide this case, ante, pt. 1, pp. 36, 545.

(*o*) Ubi sup.

(*p*) Infra.

(*q*) Vide also 1 Sho. 287; 2 Sir W. Bl. 1116; *Brown v. Rawlins*, 7 East, 409; S. C. (*Bourne v. Rawlins*) 3 Smith, 405; *Milbank & Dallaval*, 19 Eliz. cited in *Brown & Rawlins*, 7 East, 429, 430; 10 East, 276, argo. in *Curtis v. Daniel*; *Thomson v. Hardinge*, 9 Jur. 927.

in the case of *Burrell v. Dodd* (*r*), decided that customary or tenant-right estates, held of the lord by certain rents and services according to the custom of the manor, are not within the statutes of partition; and, consequently, that it was a sufficient objection to the plaintiff's obtaining judgment under a writ *de partitione faciendâ*, that the land, upon the face of the plea, appeared not to be *freehold* properly so called. And the court, in giving judgment, observed, that in some points the law regardeth such tenants no more than as mere tenants at will, "for the freehold at the common law resteth not in them but in their lords, unless it be in copyholds of frank tenure, which are most usual in ancient demesne." This case may therefore be added to the several other authorities fixing the freehold interest in the lord in *customary freehold lands*, whether passing by *surrender*, or by *deed* of grant or bargain and sale (*s*).

The author has had frequent occasion in the course of the present chapter to speak of tenants in ANCIENT DEMESNE, and he purposes now to proceed to a consideration of the peculiar nature and properties of that tenure.

(*r*) 3 Bos. & Pul. 378.

(*s*) See the note to *Carey v. Askew*, Eden's ed. of Brown's C. C. 2d vol. p. 59; Mr. Eden there mentions that this doctrine (as he was informed) had been discussed as applying to certain customary estates within the manors of the Bishop of

Durham, but that the question had not called for judicial determination. And see further as to customary freeholds, ante, pt. 1, p. 158, tit. "Surrender;" p. 510, tit. "Pleading;" p. 527, tit. "Mandamus."

CHAPTER XX.

Of Ancient Demesne.

It may be proper to premise that the *Court of Ancient Demesne* is a Court Baron, and not a Court of Record (*a*); a writ of error, therefore, does not lie in it, but the relief is by writ of false judgment (*b*).

The *tenure of Ancient Demesne* is confined to such lands as were held in socage of manors belonging to the crown in the reign of Edward the Confessor (*c*), and in the reign of William the Conqueror (*d*), and sometimes therefore designated "socage in ancient tenure:" and whenever a question arises as to the particular lands being *ancient demesne*, it is to be decided by the production of Domesday Book (*e*); wherein the lands which were in the possession of King Edward are called *terræ Regis Edwardi*, and those which were in the possession of William the Conqueror are called *terræ Regis*.

Domesday-Book (*f*), which about fifty years ago was reprinted

(*a*) Kitch. 187, cites 9 Ed. 4, 43, 3 Hen. 4, 26; ib. 190; 4 Inst. 269; Comy. 94, and 1 Salk. 340, in *Hunt v. Bourne* (or *Burn*). And the suitors are the judges of the court; Kitch. 190, (cites 34 Hen. 6, 38; 12 Hen. 4, 17; 3 Hen. 4, 16; 6 Hen. 4, 2;) 4 Inst. 269; *Jentleman's case*, 6 Co. 11 b; F. N. B. 11 G. n. (*b*).

(*b*) F. N. B. 12; Kitch. 187, 190; *Jentleman's case*, sup.

(*c*) F. N. B. 14 D.; Kitch. 192.

(*d*) 2 Inst. 542; 4 Inst. 269; *Lex Man.* 26, 27; *Hunt v. Burn*, 1 Salk. 57; S. C. Holt, 60; F. N. B. 14 D.

(*e*) 9 Co. 31 a; Kitch. 192, cites 49 Ed. 3, 22; and also a trial, 7 Hen. 6, 34, in which it was certified by Domesday-Book, that London was not ancient demesne. (N. B. The Appendix to the Second General Report from the Commissioners on Public Records, reprinted in 1819, p. 467, cites for this 37 Hen. 6, 27; vide 2 Leo. 191.) *Saunders v. Welch*, cited 1 Salk. 57; *Gilb. Ev.* 69; *Lex Man.* 28; *Doe d. Rust v. Roe*, 2 Burr. 1048. But whether parcel or not of a

manor which is ancient demesne, is to be tried *per pais*; Kitch. 192, 193, cites 12 Ass. 18; 22 Ass. 45; *Hunt v. Burn*, sup.; *Hopkins v. Pace*, 1 Sho. 271, ca. 168; S. C. Comb. 183; 9 Co. 31 a; Br. Trials, pl. 120.

(*f*) The better opinion seems to be, that this book was compiled upon the introduction, or rather on the complete establishment, of feudal tenure in England by William the Conqueror, for the purposes of military defence; and, as Sir Martin Wright supposes, (*Ten.* 56,) "in order to discover the quantity of every man's fee, and to fix his *homage*." Sir Wm. Blackstone observes, "We learn from the Saxon Chronicle (A. D. 1085), that in the 19th year of King William's reign, an invasion was apprehended from Denmark; and the military constitution of the Saxons being then laid aside, and no other introduced in its stead, the kingdom was wholly defenceless; which occasioned the king to bring over a large army of Normans and Bretons, who were quartered upon every landholder, and greatly

by government under an address of the House of Lords (*g*), records the survey made by command of William the Conqueror of all the manors throughout England, except those in the northern counties, viz. Northumberland, Cumberland, Westmoreland and Durham (*h*), and part of Lancashire.

oppressed the people. This apparent weakness, together with the grievances occasioned by a foreign force, might co-operate with the king's remonstrances, and the better incline the nobility to listen to his proposals for putting them in a posture of defence. For as soon as the danger was over, the king held a great council to inquire into the state of the nation; the immediate consequence of which was the compiling of the great survey, called Domesday-Book, which was finished in the next year; and in the latter end of that very year the king was attended by all his nobility at Sarum; where all the principal landholders submitted their lands to the yoke of military tenure, became the king's vassals, and did homage and fealty to his person;" 2 Com. 48; and adds (*ib.* p. 51), "In consequence of this change, it became a fundamental maxim and necessary principle (though in reality a mere fiction) of our English tenures, 'that the king is the universal lord and original proprietor of all the lands in his kingdom; and that no man doth or can possess any part of it, but what has mediately or immediately been derived as a gift from him, to be held upon feudal services.'"

The reader, however, is reminded, that most of our ancient text writers are agreed that military services and feuds may be traced to the Saxon polity, but that the feudal law was completely established about the middle of the reign of William the Conqueror. Vide Harg. & Butl. notes to Co. Lit. 64 a and b, 65 a, 191 a; 2 Hallam's Europe, 409, 410, 416, &c.

(*g*) And it is said to be executed with the most scrupulous fidelity and correctness: see first Report of the House of Commons on Public Records, Appendix A, '1 a; 1 Phill. on Ev. 321.

(*h*) A valuable supplement to Domes-

day-Book was a few years ago reprinted, entitled the Boldon-Book, or Survey of the Palatinate of Durham. In the Appendix to the Second General Report from the Commissioners on Public Records, (p. 475), it is stated that Hugh Pudsey, called also De Puteaco, De Pusar, and De Pusaz, nephew to Stephen, king of England, caused this survey to be made in 1183; and that it probably had its name from Boldon, a village and parish near Sunderland, in the same diocese, where either it was compiled, or according to the census of whose inhabitants the other manors, &c. in that bishopric were regulated. This useful work adds, "Of the motives or reasons which led to this compilation, we have no record; but Bishop Pudsey affected the state of a sovereign in his own palatinate; in which there were many royal rights, which had been enjoyed by its prelates long before the conquest, and were continued long after; several of which remain even to the present day. And perhaps it was in consequence of these exclusive rights, that when the general census, known by the name of Domesday-Book, was made, the bishoprick of Durham was passed by, as it was found to contain no rights which could be claimed by the monarch, without trenching on those which had been possessed by its bishops through a long series of years."

This record it seems is frequently appealed to, and has been admitted as evidence in trials at law, on questions affecting the seignorial rights of the see of Durham.

One copy of the Boldon-Book is in the bishop's auditors' office, Durham; another in the library of the Dean and Chapter in the same city; and a third among the manuscripts of Archbishop Laud at Oxford.

This survey is supposed by some ancient writers to have been undertaken about the year 1081, and to have been finished in 1086 (*i*); but the exact time of its commencement is differently stated by historians, some affirming that it was begun in 1085, and finished in about a year (*k*).

Domesday-book has been sometimes called *Liber de Wintonia*, or *Rotulus Wintoniæ*, which is considered to be evidence of the first place of its deposit. It appears to have been removed to Westminster soon after its completion, and kept under seal in the Exchequer, till, in 1696, it was deposited in the chapter house.

Ancient writers are not agreed as to the derivation of the word "*Domesday*." It has been affirmed (*l*), and with apparent probability, to be a corruption of *Dome-boc*, which was the appellation given to Alfred's register or code of Saxon laws; but the word "domesday" was frequently used, even so long back as the eleventh century, to denote a survey (*m*).

As there can be no appeal from Domesday-Book, and no averment made against it (*n*), so it has not inappositely been called *liber judicarius* (*o*); and we have a further clue to the signification of the word "Domesday" in Sir Edward Coke's 4th Inst. (*p*), who, in adverting to its uncontrollable truth and verity, says, "*And therefore in that respect like the doome and judgement at Doomesday.*"

Domesday-book was frequently appealed to in ancient times, as will be seen by consulting several of the authorities already referred to (*q*).

In the case of *Griffin v. Palmer* (*r*) the issue was, whether the manor of Bowden in Northamptonshire were ancient demesne or not; and the Court of Common Pleas awarded that the plaintiff "*habeat recordum libri de Domesday hic in Oct. Mich. &c.*," and on production of the book at the trial, it appeared that the manor of Bowden in Leicestershire was ancient demesne, but that Bowden in Northamptonshire was not.

The like issue was taken in ejectment for lands in Longhope in Gloucestershire, and at the trial Domesday-Book was brought into

(*i*) See Lex Man. 27; 4 Inst. 269.

(*k*) Baron Maseres, in the notes to his "*Excerpta ex Orderico Vitali*," p. 259, represents the survey to have begun as early as 1071. See App. to Second Gen. Rep. from Comm. on Pub. Rec. p. 382 et seq.

(*l*) See Bishop Kennett's *Parochial Antiq.*

(*m*) See App. to Second Gen. Rep. from Comm. on Pub. Rec. 381, 383, 384.

(*n*) 4 Inst. 269.

(*o*) Spelm. Gloss. v. Domesday; and see 4 Inst. 269.

(*p*) P. 269. So Redborne, Angl. Sacr. tom. i. p. 257, "*Vocatus Domysday; et vocatur sic, quia nulli parcat sicut nec magnus dies judicii.*"

(*q*) Ante, p. 579, n. (*e*).

(*r*) 1 Brownl. 43; S. C. Hob. 188, Ca. 230; Lex Man. 30.

court by an officer of the Exchequer, by which it appeared that Hope was ancient demesne, but that there was no mention of Longhope, upon which the counsel for the defendant offered to prove that Hope and Longhope were one and the same place; but the court would not admit such proof, and held that the defendant should have pleaded that it was known as well by the one name as the other (*s*).

And unless the manor or land is mentioned under the title *terræ Regis* or *terræ Regis Edwardi* (*t*) in Domesday-book, it will not be deemed ancient demesne, although the book itself should furnish evidence of a grant thereof from the crown (*u*).

There are three sorts of tenants in Ancient Demesne; one who hold their lands freely by the grant of the king; a second who hold of a manor which is ancient demesne, *but not at the will of the lord*, and whose estates pass by surrender, or deed of grant or bargain and sale, and admittance, and who are denominated customary freeholders (*x*); and a third who hold of a manor, which is ancient demesne, by copy of court roll, *at the will of the lord*, and who are denominated copyholders of base tenure, which latter could not have maintained a writ of right close (*y*) and cannot maintain a *monstraverunt* (*z*), but are to sue by plaint in the lord's court (*a*).

Of the Privileges incident to this Tenure.

It should seem that by the terms of the original grants of land of the tenure of ancient demesne, the grantees bound themselves to cultivate the king's demesnes for the sustenance of his household (*b*), and to supply provisions for the king's garrisons, and for the soldiers in other places, in time of war or rebellion (*c*); for which services certain privileges were secured to them regarding both their persons and estates, for they appear to be excused (but in respect only of their lands held in ancient demesne) from serving on juries or inquests

(*s*) *Holdy v. Hodges*, 1 Sid. 147; S. C. *Holdage v. Hodges*, 1 Lev. 106. And see similar issues as to the manor of Sudbury in Suffolk, Dy. 250 b; 9 Co. 31 a; and the manor of Otterbury, *Saunders v. Welch*, cited 1 Salk. 57. Vide also 1 Nels. Abr. 210 (A.); 1 New Abr. 110 (A. marg.).

(*t*) Ante, p. 579.

(*u*) Kitch. 192, 193; *Saunders v. Welch*, sup.

(*x*) And these, it is said, even when holding by copy of court roll, may have a *monstraverunt*, and might have used a writ of right close; Kitch. pp. 158, 159, 194; Co. Cop. s. 32, Tr. 58.

(*y*) See as to this writ post, p. 585 et seq.

(*z*) Br. Abr. Ancient Demesne, pl. 41; Kitch. 159; F. N. B. 14 D., 16 E.; Co. Cop. s. 51, Tr. 118, 119; *Pymmok v. Hilder*, Cro. Jac. 559. See as to this writ post, p. 584, 585.

(*a*) Ante, pt. 1, p. 473 et seq.

(*b*) See 1 Leo. 232, in *Ward & Knight's* case; 2 Inst. 221, 542; 4 Inst. 269; Lex Man. 29, 81; 2 Sho. 16, in the *King v. Bettworth*; Hob. 48, in *Cox v. Barnsly*.

(*c*) See the *Town of Leicester's* case, 2 Leo. 191; Lex Man. 29, n.; ib. 32, 33.

out of their manor or seignior (d); and from taxes and tallages granted by parliament, if not specially charged (e); and from payment of pontage and toll of passage (f): and this latter privilege extends as well to tenants who hold of a subject as of the king, and to tenants for life or years, or even at will (g). But the exemption from toll is only in respect of such things as arise or grow on the land, or as are bought for manuring it, or for the necessary use of the tenant and his family, and does not extend to general merchandize (h), though this was formerly doubted (i).

Whether merchandize or not is to be shown on the other side, so that the tenant may allege an exemption generally (k). He need not prescribe for the privilege, as it is incident to his estate, and it is sufficient to say that he is *tenant* and *inhabitant* within the manor of A., which is ancient demesne (l): and though safer to allege notice that he was tenant in ancient demesne, it does not seem to be necessary (m).

Tenants in ancient demesne were formerly to be impleaded in the lord's court only by a writ of right close (n) directed to the lord of the manor, commanding him to do the tenant who prosecuted the

(d) F. N. B. 14 F.; 4 Inst. 269; Br. Auncien Demesne, pl. 42. "Tenants of ancient demesne shall be exempt from the leet, view of frankpledge, and from sheriff's tourns." Br. Aunc. Dem. pl. 49, cites the Reg. fo. 181. And see F. N. B. 14 E., marg. But ancient demesne is no exemption from serving the office of high constable; King v. Bettsworth, 2 Sho. 75; S. C. Anon. 1 Vent. 344.

(e) But the author apprehends that all general acts of parliament extend to ancient demesne lands, when the tenure is not prejudiced by the purview of such acts. See 1 And. 71, &c.; 4 Inst. 270; Hob. 48; Com. Dig. Ancient Demesne (K.); ante, pt. 1, p. 81.

(f) Br. Aunc. Dem. pl. 43, 49; ib. Privilege, pl. 56; F. N. B. 14, 228; 2 Inst. 542; 4 Inst. 269; Kitch. 194; Hob. 48, in Cox v. Barnsly. Ancient demesne tenants were also exempt from contribution to the expenses of knights in parliament. See all the authorities referred to in this note; vide also ante, p. 566; Heyw. C. 82, 2nd ed.

Tenants in ancient demesne, *holding by copy of court roll*, were excluded by 31 Geo. 2, c. 14, from the privilege of voting

at elections; vide Heyw. C. 75, &c.; Male, 2nd ed., 133, 285; ante, p. 568. But see reference to 2 W. 4, c. 45, ante, pt. 1, p. 557, n. (s).

(g) F. N. B. 228, D.; Savery v. Smith, 2 Lutw. 1146; 2 Leo. 191; 2 Vin. Abr. 481, (C.); 1 Roll. Abr. 322 (C.); and to the lord himself, F. N. B. 228, B.; Savery v. Smith, sup.; Br. Auncien Demesne, pl. 43. (If he be tenant also, 1 Roll. Abr. 322, D., cites 9 H. 6, 25 b.) See the form of the writ of exemption from toll, F. N. B. 228, A.

(h) Ward v. Knight, Cro. Eliz. 227; S. C. 1 Leo. 232, 233; 2 Inst. 221; 1 Roll. Abr. 321 (B.); 2 Leo. 191.

(i) F. N. B. 228, A. & E.; 1 Roll. Abr. 321 (B.) pl. 2, 3.

(k) Lutw. 1146, 1147, in Savery v. Smith.

(l) Ib. In the case of the Town of Leicester, 2 Leo. 191, Shute, Just., was of opinion, "that an inhabitant within ancient demesne, although he be not tenant, shall have the privileges."

(m) Savery v. Smith, sup.

(n) But see reference to the act of 3 & 4 Will. 4, c. 27, post, p. 585, n. (d).

writ what was right in his court (*o*); and if tenants in ancient demesne had been otherwise impleaded, they might have pleaded their tenure in abatement of the suit; but this, as we shall presently see, was only where the realty might have come in question.

Of the Writs of Monstraverunt, and de non ponendis.

Monstraverunt. Should tenants in ancient demesne be distrained by their lords to perform other customs or services than they and their ancestors have usually performed, they may be relieved by the writ of *monstraverunt* (*p*), founded on a petition and ordinance of parliament (*q*), and directed to the lord, commanding him not to distrain contrary to such ancient usage; upon which another writ of *monstraverunt* may be sued, directed to the sheriff, commanding him to cause justice to be done if the lord be disobedient.

But the lord cannot be put to answer the attachment, before the court be certified by the exchequer that the manor is ancient demesne; therefore the plaintiff in the *monstraverunt* should sue a special writ to the treasurer and chamberlain of the exchequer to certify the same (*r*).

Yet it seems that the certificate lawfully coming into court by *certiorari* and *mittimus* is conclusive, though there be no issue joined, whether frank fee or ancient demesne (*s*).

The sheriff may make resistance and rescous to any distress by the lord; and in case of the lord's distraining again, the tenants may sue an attachment against the lord, returnable in the King's Bench or Common Pleas, and recover their damages (*t*). If the lord distrain them pending the attachment, they may have a special attachment, directing the sheriff to make deliverance (*u*).

The writ of *monstraverunt* may be sued generally, without showing the names of the tenants; but in the attachment against the lord, the tenants suing it must be named (*x*), or at least the tenants distrained after the prohibition are named by their proper names, and the others by the general words *homines manerii* (*y*).

(*o*) 2 Inst. 542; 4 Inst. 269. See the forms of this writ, Reg. f. 9; F. N. B. 11. A tenant in ancient demesne may also have a bill of fresh force in the court of ancient demesne, within forty days after disseisin, without any writ sued; Kitch. 188, 189; F. N. B. 13 E.; Br. Aunc. Dem. pl. 1, cites 26 H. 8, 4.

(*p*) See the forms of this writ, F. N. B. 14, 15.

(*q*) 18 Ed. 1, 27. It should seem that the tenants may have this writ without

being distrained, 40 Ed. 3, 44; F. N. B. 14 F.

(*r*) F. N. B. 16 C. See this writ, ib.

(*s*) F. N. B. 16 C. n. a, cites 7 H. 6, 32, 39, E. 3, 6.

(*t*) F. N. B. 15 B.

(*u*) F. N. B. 15 I.

(*x*) Plowd. 129; F. N. B. 15 D. F. And see 4 Inst. 269.

(*y*) F. N. B. 15 F. Those only who are specially named in the writ of attachment shall recover damages; F. N. B. 16 B.

But if one of those named in the attachment will not sue, he may be severed, and the death or nonsuit of one will not prejudice his companions, although the count in the *monstraverunt* be joint (*z*).

And one tenant may sue the writ of attachment alone by his proper name, and in the name of the other tenants by the above general words (*a*).

If frank tenants and tenants by base tenure join in a *monstraverunt*, the writ shall abate only as to the latter (*b*).

De non ponendis. In case of being impannelled on any inquest, tenants in ancient demesne may have the writ *de non ponendis in assisis et juratis*, and if, in contempt of such writ, the sheriff will return them, they may have an attachment against him (*c*).

Of the Writ of Right Close (d).

This writ has been said to have been peculiar to lands in ancient demesne (*e*), but the observation would seem to have been unfounded (*f*). The writ was directed to the lord of the manor, or sometimes to the bailiff, and he that brought it might have made protestation to pursue it in nature of what writ he pleased, either in nature of a proper writ of right or of an assise of *novel disseisin*, *cui in vitâ*, or any other real writ; and therefore it might have been brought by tenant for life, in tail, or in dower (*g*).

The demandant in a writ of right close could not have removed the plea out of the lord's court for any cause (*h*). But the tenant might have removed the same by *recordare* for several causes, as that the lands were frank-fee, and not ancient demesne (*i*); or that there

(*z*) F. N. B. 15 G.; ib. 16 E. For though the count be joint, the tenures are several, and so the torts and damages are several; ib. n. b. The plaintiffs in the attachment may count severally; and the day or place where the lord distrained need not be alleged in the count; F. N. B. 16 A.

(*a*) F. N. B. 15 H.

(*b*) F. N. B. 16 E. F.

(*c*) 1 Nels. Abr. 212 (C.) pl. 1; 1 New Abr. 111 (B.) pl. 2 marg.

(*d*) By the 3 & 4 W. 4, c. 27, (referred to in pt. 1, p. 473, n. (*a*), and which will be found in the Appendix,) the writ of right close was abolished; but the author thought it right that his observations on that form of action, in the last edition of this work, should have a place in the present one.

(*e*) Booth's Real Actions, 116.

(*f*) The writ of right called *præcipe in capite*, and which lay where the lands were holden of the King *in capite*, as of his crown, was close, F. N. B. 5 E.; Reg. Brev. 4 b; Booth's Real Actions, 87, 88. The writ of right patent, indeed, when brought in the King's court, *quia dominus remisit curiam*, was also close; Booth's Real Actions, 87, 88. And see ante, p. 562, tit. "Customary Freeholds."

(*g*) F. N. B. 11 F.; Booth, 116.

(*h*) 34 H. 6, 35; 2 E. 3, 35; and see 3 H. 4, 14; 2 Vin. Abr. 495, 496, pl. 9, marg.; F. N. B. 13 B; ib. n. a; Inst. 269. But see 2 E. 3, 29.

(*i*) F. N. B. 13 B. & C.; Booth, 117; 4 Inst. 269; Com. Dig. Ancient Demesne (G. 5); 2 Vin. Abr. 495, 496, pl. 9.

were no suitors, or only one suitor (*k*); or from a just apprehension of partiality, as that the demandant was steward (*l*).

If the tenant for special cause removed the plea into the Common Pleas by *recordare*, although the plea was without writ, yet he could not have shown *new* cause to retain the plea in C. B.; but if the cause was general, as *that the tenant claimed to hold at common law*, there the tenant might have shown any special cause to prove the tenements frank-fee, as, for instance, a confirmation by the lord (*m*).

If the demandant and tenant put themselves upon the grand assize (*n*), or the tenant pleaded a foreign plea, or vouched a foreigner to warranty (*o*), then a *supersedeas* was to be granted out of Chancery to the lord of ancient demesne, or his bailiff (if the writ were so directed), to surcease; and on such foreign voucher the defendant should have sued his writ of *warrantia chartæ* against the vouchee, returnable in the Common Pleas, and then he might have had the *supersedeas* out of Chancery to surcease until the plea was determined in C. B. (*p*).

And if the lord or bailiff proceeded after such writ sued forth, the tenant might have had an attachment against him to answer the contempt in the Common Pleas to the King and to the party (*q*). So if the record in ancient demesne was removed by *recordare*, and the lord or bailiff proceeded in the plea, the tenant might have sued a *certiorari*, directed to the justices of the Common Pleas, to certify the tenor of the record into Chancery, and of the removal; and on the certificate into Chancery the tenant should have had an attachment, returnable in the Common Pleas, to answer to the King and to the tenant who sued forth the *recordare* (*r*).

(*k*) F. N. B. 13 C.; 4 Inst. 270. So, it should seem, if there had been four suitors only; Br. Cause a remover plea, 35; F. N. B. 13 C. marg.

(*l*) Booth, 117; Rast. Ent. 242 b. The demandant being bailiff does not seem to have been a cause of removal; F. N. B. 13 B. (n. a), cites 11 H. 6, 10.

(*m*) F. N. B. 13 F.; ib. (n. a) cites 9 H. 6, 34, 35; 21 E. 3, 32.

(*n*) But where in a writ of right close the plaintiff made protestation to sue in nature of a writ of right at common law, and the tenant joined the mise [or issue] upon the *mere right*, and put himself on the grand assize, the record was removed by an *accedas ad curiam* into the court of C. B., and it was held that the tenant's putting himself upon the grand assize was not a sufficient cause for removing the re-

cord, but that he should have a jury in the nature of the grand assize, and a *procedendo* was awarded; Stafford's case, Dy. 111 b. And see Lex Man. 41; Rast. Ent. 242. But see 1 H. 7, 29; Booth, 117; F. N. B. 13 H. (n. b).

(*o*) See as to voucher into the county by tenant in ancient demesne, the vouchee having nothing to be summoned by within the seignior, Dy. 69 b, pl. 35; vide also F. N. B. 13 G. (n. b).

(*p*) F. N. B. 13 G. & H.; Br. Aunc. Dem. pl. 35, cites 1 H. 7, 30. If the tenant plead bastardy, &c., a *supersedeas* also goes to the lord to surcease, for the court of ancient demesne cannot write to the bishop; Reg. 9 a; 1 Com. Dig. 354.

(*q*) F. N. B. 14 A.

(*r*) F. N. B. 13 H.

But if the plea of *warrantia chartæ* had been discontinued in C. B. then the demandant might have sued a writ out of Chancery, directed to the justices of C. B., to certify the King in Chancery if the plea of *warrantia chartæ* was pendent or discontinued, so that if discontinued or determined, the court of ancient demesne might have been directed to proceed in the plea (*s*).

We have already seen that a writ of error does not lie to reverse a judgment in a court of ancient demesne, but that the party may have a writ of false judgment (*t*). Where it was assigned for error that the writ of right close was directed to the bailiffs, when it appeared by the record that the plea was holden before the suitors, and also that twelve recognitors only were returned, instead of twenty-four, the judgment of the manor court was affirmed (*u*).

When Ancient Demesne is a good Plea; and of the general rules of Pleading as to lands of that Tenure.

In all cases where a recovery against the tenant in ancient demesne could have made his land frank-fee, there *ancient demesne* was a good plea (*x*); it might therefore have been pleaded in bar in assize or *re-disseisin* (*y*), and all real actions (*z*).

Ancient demesne is also a good plea wherever the interest of the land is bound, or the realty by intendment may come in by debate, as in an ejectment (*a*); but if not so pleaded, it will be too late after

(*s*) F. N. B. 14 A.

(*t*) Ante, p. 579. But as a copyholder could not have had a writ of right close, (ante, p. 582,) if one recovered against him in ancient demesne by writ of right close he should not have had a writ of false judgment, nor assigned this for error, for then he would have been restored to a freehold which he never lost; 14 H. 4, 34. The recovery, however, it seems would have been void, and might have been avoided by plea; 1 H. 5, 12; F. N. B. 12 B. (n. b).

(*u*) *Abrahall v. Nurse*, 3 Leo. 63; S. C. Bendl. 279. In *Lex Man.* p. 41, the reason assigned for overruling the first exception was, that it should be intended that the bailiffs were likewise suitors.

(*x*) 8 H. 6, 34; 1 Roll. Abr. 322, (E.) pl. 1. See generally as to this plea, *Com. Dig. Anc. Dem.* (F. 5.)

(*y*) 7 H. 6, 35 b; 1 Roll. Abr. 322, pl. 7; *Coke v. Barnsley*, 1 Brownl. 234. So in assize of rent out of land in ancient de-

mesne, Dy. 8, pl. 14; but see *Br. Aunc. Dem.* pl. 3; *ib.* Privilege, pl. 7; vide post, pp. 589, 590, as to assize by tenant by *elegit*, and *stat. merchant*.

(*z*) 8 H. 6, 1; 1 Roll. Abr. 322, (E.) pl. 2; 4 Inst. 270. It might have been pleaded after a release of a default, upon the return of the grand cape; 8 H. 6, 1; 1 Roll. Abr. 324 (H.) pl. 1. In *formedon* tenant not allowed to plead ancient demesne after the view; *Fitz. Abr. Aunc. Dem.* pl. 12, cites *Hill*. 50 E. 3, 10. *Contrà in præcipe quod reddat*; *Br. Aunc. Dem.* pl. 10, cites 50 E. 3, 9. The prayee in aid should not plead ancient demesne, because the tenant had affirmed the jurisdiction before by the aid prayer; *Br. Aunc. Dem.* pl. 15; 2 Vin. Abr. 488, (H.) pl. 4.

(*a*) *Smith v. Arden*, Cro. Eliz. 826; S. C. 2 And. 178; S. C. (called *Alden's case*), 5 Co. 105; S. P. *Hob.* 47, in *Cox v. Barnsley*; 1 Bulst. 108; 2 Roll. Rep. 181; *Comb.* 40; 4 Inst. 270.

judgment to take advantage of the change of tenure (*b*); and, indeed, it should seem that in ejectment it must be pleaded within the first four days of the term (*c*), and that the plea must be with leave of the court (*d*), on an affidavit stating that the lands are holden of a manor which is ancient demesne, that there is a court of ancient demesne regularly holden, and that the lessor of the plaintiff has a freehold interest (*e*). But the plea may be filed *de bene esse* where the four days would expire before cause could be shown, and the plea pleaded (*f*).

An affidavit to verify the fact of the land being ancient demesne would seem to be necessary in all cases where the plea is to the jurisdiction of the court, and therefore it would seem to have been necessary in a plea of ancient demesne in formedon (*g*); yet it was formerly held that foreign pleas only, and not pleas to the jurisdiction, were to be sworn to (*h*). It should certainly seem that the plea of ancient demesne is good without a defence (*i*).

Ancient demesne is likewise a good plea in replevin (*k*); in a writ

(*b*) Neither in such a case could the suitors of the manor court refuse to execute a writ *de procedendo ad executionem judicii*; *Gybon v. Bowyer*, Mo. 451.

(*c*) *Smith v. Roe*, Barnes, 331; Sir G. Cooke's Rep. Pract. C. B. 103; Prac. Reg. C. P. 2; *Holdfast v. Carlton*, Sir G. Cooke, 43; *Pease v. Badtitle*, Barnes, 336; *Bingham v. Barker*, cited Barnes, 187; *Doe & Thomas*, Barnes, 185; *Deighton d. Roberts & Wife v. Forster*, 2 Barnes, 156; *Denn d. Wroot v. Fenn*, 8 T. R. 474. But see as to country cause, *Doe & Robinson*, 2 Str. 1120. The plea of ancient demesne has been allowed after imparlance, *Marshall v. Allen*, Latch. 83; S. C. Palm. 406; S. C. Cro. Car. 9; S. C. cited Willes, 239; Dy. 210 b, pl. 27; ib. 373 b, pl. 13 n; Com. Dig. Abatement (d 1); yet see contra in replevin, *Vincent v. Wallis*, Sty. 197. Vide also Hetl. 177; *Clarke v. Hampton*, 4 Jac., cited in *Marshall & Allen*, sup.; ante, pt. 1, p. 512.

(*d*) *Barnard. Rep. B. R. 7*, 352, 365; *Andr. 368*; 1 Sir W. Bl. 197; *Tidd's Pr. 680*, 8th edit.

(*e*) *Smith v. Roe*, sup.; *Doe d. Rust v. Roe*, 2 Burr. 1046; *Hatch v. Cannon*, 3 Wils. 51; *Tidd's Pr. 680*, 8th edit. But formerly the affidavit was not thought necessary in ejectment; *Goodright v. Shuffill*, 2

Ld. Raym. 1418, cites *Earl Coningsby's* case. An affidavit that the lands are reputed to be ancient demesne would seem to be sufficient, there being a probable cause shown to plead it; *Doe d. Henant v. Thomas & others*, Barnes, 185,

(*f*) *Doe d. Morton v. Roe*, 10 East, 523.

(*g*) *Hatch v. Cannon*, ubi sup.; and see 1 P. W. 476, anon.

(*h*) *Cholmondley v. Broom*, Carth. 402; S. C. 3 Salk. 173; S. C. 5 Mod. 335; 12 Mod. 123; Vin. Abr. Foreign Plea; 1 Saund. 98, n. 1; 1 Chitty on Pleading, 429. And see *Goodtitle v. Rogers*, *Barnard. Rep. B. R. 7*; 2 Vin. Abr. 503, pl. 27.

(*i*) *North v. Hoyle*, 3 Lev. 182; *Smith v. Frampton*, ib. 405; *Farrers v. Miller*, 1 Sho. 386. But see S. C. *Ferrer v. Miller*, 1 Salk. 217; Carth. 221, where Holt, C. J., said, that the plaintiff might have refused the plea for want of a defence.

In præcipe quod reddat ancient demesne a good plea, without traversing that it was frank-fee; *Br. Traverse*, per &c., pl. 185.

(*k*) 4 H. 6, 19; 7 H. 6, 35 b; 21 E. 3, 10, 51; 29 E. 3, 9; 30 E. 3, 12 b; 2 H. 7, 17; 21 E. 4, 3 a; 10 H. 7, 14; 2 Vin. Abr. 482, pl. 5; *Br. Aunc. Dem.*

of mesne or of ward (*l*); in account against guardian in socage, or bailiff of a manor (*m*); in a writ of admeasurement of pasture (*n*); and in partition (*o*), the land being collaterally, though not directly in question. It has been said to be a good plea also in assize by tenant by *elegit*, the statute giving an assize to such tenants not extending to ancient demesne lands (*p*); but the case of *Smith v. Arden* (*q*) fully decided that ancient demesne lands might be extended on an *elegit*, under the statute of 13 Ed. I., neither the freehold nor the possession being removed by such execution.

When ancient demesne is pleaded, it is essential to allege that the lands are *held of* some manor which is ancient demesne, and not that they are *parcel of* such manor, for that would imply that they were part of the demesnes, and pleadable only at common law (*r*). And when lands are pleaded in a real action as being frank-fee, though held of a manor which is ancient demesne, it should seem that it is not sufficient for the demandant to say that the lands are frank-fee, but that he must plead specially how they became so (*s*).

pl. 4, cites 40 E. 3, 4; 4 Inst. 270; Alden's case, 5 Co. 105 a; Cox v. Barnsly, Hob. 47; Owen's case, Ow. 24; Godb. 64, ca. 76; Scroggs, 123; F. N. B. 11 L. n. (a). And even after a deliverance made in replevin, 30 E. 3, 12 b; 1 Roll. Abr. 324, (H.), pl. 2.

(*l*) But see reference to 3 & 4 Will. 4, c. 27, by which the writ of right of ward was abolished, ante, p. 585, n. (*d*).

(*m*) 4 Inst. 270; Alden's case, sup.; Hob. 47.

(*n*) 8 H. 6, 34; Br. Aunc. Dem. pl. 20, 37; 1 Roll. Abr. 322, pl. 9.

(*o*) Grace v. Grace, Tr. 12 Jac. 1 Roll. Abr. 322, pl. 10; Pont v. Pont, Sir T. R. 249. But see reference to 3 & 4 W. 4, c. 27, by which the writ of partition was abolished, ante, p. 585, n. (*d*).

(*p*) Br. Aunc. Dem. pl. 33; ib., Parliament & Statutes, pl. 81, cites 22 Ass. 45. And see 2 Vin. Abr. Anc. Dem. (E.), pl. 15, marg.

(*q*) Vide the reference to sec. 11 of 1 & 2 Vict. c. 110, ante, p. 571, n. (*r*); ante, pt. 1, p. 47, n. (*o*); Cro. Eliz. 826; 5 Co. 105; 2 And. 178. And see Cox (or Coke) v. Barnsly, Hob. 47; S. C. 1 Brownl. 234; Martin v. Wilks, Mo. 211; Hut. 117; ante, p. 572, tit. "Customary Freeholds."

(*r*) Br. Aunc. Dem. pl. 34, cites 41 Ass. 7; ib., pl. 6, cites 41 E. 3, 22; 11 Co. 10 b, cites also 48 E. 3, 11 a, b; Fitz. Aunc. Dem. 9; Kitch. 193, cites 36 H. 6, 18; Brittel v. Bade (or Dade), 1 Lord Raym. 43; 1 Salk. 186; Kite v. Laury, 3 Salk. 34; Baker v. Wich (or Winch), 1 Salk. 56; S. C. Comb. 186; S. C. (Parker v. Winch), 12 Mod. 13. See the pleadings in this case, (called Barker v. Winch,) Lex Man. App. p. 24, pl. 7. Vide also Hatch v. Cannon, 3 Wils. 51; Doe d. Morton v. Roe, 10 East, 524.

Note.—It is said that land may be ancient demesne, though parcel of a manor which is not ancient demesne; 1 Roll. Abr. 321 (A.), pl. 1, cites 30 E. 3, 12. And see 2 Leo. 191; but see ante, p. 579; 2 Burr. 1048; Hopkins v. Pace, 1 Sho. 271.

(*s*) Kitch. 193, cites 41 E. 3, 22; 12 Ass. 16; 22 Ass. 45.

As wastes are part of the demesnes of a manor, improvements by the lord cannot be ancient demesne; 5 Ass. 2; 1 Roll. Abr. 321 (A.), pl. 2; F. N. B. 14 D, n. (a).

"Frank-fee may be held of a manor of ancient demesne," Kitch. 193, cites 11 H. 4, 85. And see 1 Roll. Abr. 321 (A.), pl. 1; Br. Aunc. Dem. pl. 15; Comb. 183, in Heydon & Pace.

Br. Court Baron, pl. 3, cites 7 H. 4, 27,

But ancient demesne was not a good plea in an assize by tenant by statute merchant, &c., as a chattel interest only was demanded, and not the freehold (*t*). Nor can it be pleaded in waste upon the statute of Gloucester (*u*), for the sheriff cannot be commanded by the court of ancient demesne to inquire of the waste (*x*).

Nor can it be pleaded in trespass (*y*); nor in debt in the superior courts for damages recovered in the court of ancient demesne (*z*); nor in detinue of charters (*a*); nor in a *warrantia chartæ* (*b*); nor in a *quare impedit*, for the court cannot write to the bishop (*c*); nor by the lord in an action against him, for the land is frank-fee in his hands (*d*); nor in an action against the lord and others (*e*); nor for a lessee for years (*f*); nor for a copyholder (*g*).

that if land and damages are recovered in assize in ancient demesne court on execution, the bailiff may sell the beasts and deliver the money to the recoveror in execution of his damages; and per Huls, that if a man recover damages in ancient demesne, the bailiff may make execution in land which is frank-fee held of the manor.

(*t*) 2 E. 2; 1 Roll. Abr. 323, pl. 15; 2 Inst. 397; Martin v. Wilks, Mo. 211; 2 Vin. Abr. 484, pl. 15.

(*u*) 7 H. 6, 35. By the opinion of all the court except Walmsley; Owen's case, 36 Eliz. Ow. 24, cites 2 H. 7, 17; 21 E. 4, 3. Per three justices (Walmsley doubting), in Green v. Baker, M. 37 Eliz. 1 Roll. Abr. 323, pl. 18; Lex Man. 40; contra, Br. Aunc. Dem. pl. 37, cites 8 H. 6, 34; ib., pl. 20, cites also 7 H. 6, 35; ib., Parlement, pl. 17; Kitch. 189, cites 7 H. 6, 37; 8 H. 6, 83. And see Cro. Eliz. 826, in Smith v. Arden; Cox v. Barnsly, Hob. 47, 48.

(*x*) 2 Inst. 306; 2 Saund, 254, in Green v. Cole, action of waste upon the statute does not lie in ancient demesne; Br. Parlement, pl. 17, cites 8 H. 6, 35. For the court cannot award process to the sheriff to inquire of waste; "but waste lies by writ of right there, and shall have process at common law, viz. distress infinite, *quare inde*, for writ of waste was not at common law;" Br. Aunc. Dem. pl. 40, cites 32 H. 6, 25; ib., Waste, pl. 141, cites S. C. (called by error 23 H. 6, 25.) Vide also on this plea in waste, 2 Vin. Abr. 484, 5, pl. 18, 22

(*y*) See extract from the stat. of Gloucester, [6 Edw. 1, c. 5, "Waste,"] ante, pt. 1, p. 424, n. (*o*); 46 E. 3, 1; 2 H. 7, 17; Br. Aunc. Dem. pl. 7, 36; Smith v. Arden (or Alden's case), ubi sup.; Cox (or Coke) v. Barnsly, Hob. 47; S. C. 1 Brownl. 234; Rodd v. Lord Coningsby, Bunb. 132; 1 Roll. Abr. 322 (E.), pl. 11, 12, 13; Kitch. 188, cites 46 E. 3, 1; 47 E. 3, 22; 2 Vin. Abr. 482, 483, pl. 11, 12, 13; 4 Inst. 270.

(*z*) 39 H. 6, 3; Kitch. 189.

(*a*) 1 Roll. Abr. 323 (E.), pl. 14; Kitch. 189.

(*b*) F. N. B. 135, K; Kitch. 189.

(*c*) 1 Roll. Abr. 323, pl. 17, cites 7 H. 6, 35; Br. Aunc. Dem. pl. 20; Hob. 48, in Cox v. Barnsly. Nor in an action upon the stat. 5 R. 2; Kitch. 188, 189, cites 2 H. 7, 17; 21 E. 4, 3; Hob. 47. Nor in a *juris utrum* of his free alms, 32 E. 1; 2 Vin. Abr. 483, pl. 16; 1 D'Anv. 659, pl. 16; Kitch. 189.

(*d*) 41 E. 3, 22; 1 E. 3, 14; F. N. B. 11 (M.); 1 Roll. Abr. 323 (G.), 325 (I.), pl. 19; 2 Vin. Abr. 487 (G.), pl. 2, and marg.

(*e*) 41 E. 3, 22; 1 Roll. Abr. 323 (G.), pl. 3; 2 Vin. Abr. 487 (G.), pl. 3.

(*f*) 41 E. 3, 22 b; 1 Roll. Abr. 323 (G.), pl. 1; Fitz. Abr. Aunc. Dem. pl. 9.

(*g*) Smith v. Frampton, 3 Lev. 405; Brittle v. Bade (or Dade), 1 Ld. Raym. 43; 1 Salk. 186. And see Wilkins v. Gregory, Cary, 121, 122.

It may here be proper to repeat that in all actions concerning *copyholds* it is essential that the copyhold tenure should be pleaded; and this rule of course extends to copyhold lands held of a manor which is ancient demesne: if, therefore, they are stated to be held of *A.* of his manor of *B.*, which is ancient demesne, it would have been considered that the lands were pleadable in the lord's court by writ of right close (*h*); and if pleaded that they are *parcel of* the manor, it must be understood that the lands are part of the *demesnes*, and therefore, together with the manor, impleadable only at common law (*i*).

The author will conclude his observations on the doctrine of pleading in cases affecting tenants in ancient demesne, or their lands of that tenure, by noticing that it is not necessary, in order to establish an exemption from toll in respect of an estate held in ancient demesne, to set forth what interest the tenant has in the particular lands; and the allegation that the tenants of ancient demesne lands are *quit of toll in all places in England* is sufficient, though they are only discharged of toll as to such things which arise on the lands, or are for the necessary support of their families (*k*); and that where in trespass for erecting a stall in the market place, the defendant, a butcher, pleaded in bar a custom for the tenants in ancient demesne to erect stalls, &c., and to be quit of stallage *for their goods sold therein*, and that he did on a certain day set up a stall there *to sell flesh*; this was on demurrer adjudged to be an ill plea, the defendant not setting forth that the stall was set up to sell *his* flesh, and it might have been the flesh of another butcher, and so not within the custom (*l*).

Of Fines and Recoveries (m).

Fines might formerly have been levied and recoveries suffered of

(*h*) Which writ we have seen could not have been maintained by a copyholder, ante, p. 566, n. (*p*), 582.

(*i*) *Brittle v. Bade* (or Dade), sup.; *Doe d. Rust v. Roe*, 2 Burr. 1046; *Kite v. Laury*, 3 Salk. 34; *Baker v. Wich* (or Winch), or *Parker v. Winch*, 1 Salk. 56; Comb. 186; 12 Mod. 13; *Smith v. Frampton*, sup.; ante, p. 589; ante, pt. 1, p. 512.

(*k*) *Savery v. Smith*, 2 Lutw. 1144; 3 C. 3 Salk. 36. See the pleadings in this case, Lex Man. App., p. 29, ca. 10; ante, pp. 582, 583.

(*l*) *Chafin v. Betsworth*, 3 Lev. 190.

See the pleadings in this case, Lex. Man. App., p. 27, ca. 9.

(*m*) By 3 & 4 W. 4, c. 74, (see Appendix), it was provided that no fine should be levied or common recovery suffered after the 31st of December, 1833; and that tenants in tail should have power to dispose of the lands entailed, either in fee simple or for any less estate; but in the case of tenants in tail in remainder, and other cases mentioned in the act, certain persons are therein denominated protectors, and required to give their consent to such disposition.

And by the same act (sec. 4), a provision

lands in ancient demesne in the court of the manor upon a writ of right close (*n*); and the fine might have been *sur concessit* as well as *sur conuzance de droit* (*o*); and if pleaded in *placito conventionis secundum consuetudinem manerii* it was sufficient, though not said to be upon a writ of right close (*p*).

But it should seem that a fine levied in the lord's court by tenant in tail was a discontinuance only, and no bar (*q*), for that was only when the fine was levied in the Court of Common Pleas with proclamations by virtue of the statute of 4 H. 7; yet it has been doubted whether by custom a fine *with proclamations* in the manor court, was not a bar, notwithstanding the statute *de donis* (*r*); but the better opinion was that it was no bar even by custom (*s*). A fine by tenant in tail levied in the Court of *Ancient Demesne* would however have been a bar to the issue in tail, under the statute of limitations, 21 Jac.; but where the tenant in tail leased for three lives by a fine *sur concessit*, the court held that the issue in tail, notwithstanding a second fine levied to enure to the conuzee in fee, had a right of entry for twenty years after the expiration of the lease for lives, when the discontinuance determined, and therefore that the plaintiff was entitled to recover in ejectment, even supposing his lessor to be barred of a formedon, by twenty years having passed after the right of action accrued (*t*).

And a recovery suffered in the Court of Ancient Demesne accord-

was made that no fine or recovery levied or suffered in a superior court, of lands of ancient demesne tenure, should be reversed upon a writ of disceit, except as to the lord of the manor.

And also (sec. 5), that a fine or recovery of ancient demesne lands levied or suffered in the manor court, after a fine or recovery thereof in a superior court, should be as valid as if the tenure had not been changed by such prior fine or recovery.

And likewise (sec. 6), that in every case in which the tenure of ancient demesne might have been suspended or destroyed by a fine or recovery in a superior court, provided that the lord of the manor should not have reversed the same prior to the 1st of January, 1834, and that he was not barred of his right to reverse such fine or recovery by any law in force on the first day of the then session of parliament, and provided that the right of the lord should in any manner have been recognised within 20 years immediately preceding the 1st of

January, 1834, such lands should, from the last mentioned day, again become parcel of the manor: and that no writ of disceit for the reversal of any fine or recovery should be brought after the 31st of December, 1833; vide also 3 & 4 W. 4, c. 27, s. 36, in the Appendix, by which the writ of disceit was abolished from the 31st of December, 1834; ante, pt. 1, p. 473 et seq.

(*n*) 2 Inst. 513; 1 Cru. 86; Hunt v. Bourne (or Burn), 1 Lutw. 770, 781; S. C. 57, 244, 339, 422; S. C. (Hunt v. Browne), 3 Salk. 34; S. C. 1 Comy. 93.

(*o*) 1 Lutw. 770, 771, in Hunt & Bourne.

(*p*) Ib. 781.

(*q*) Hunt v. Bourne, sup. A discontinuance is no longer a bar to a right of entry, see 3 & 4 Will. 4, c. 27, s. 39, ante, p. 569, n. (*h*); pt. 1, p. 46, 47.

(*r*) Elmes' case, Dy. 373 a; S. C. 1 And. 71.

(*s*) 2 Inst. 515; 4 Inst. 270.

(*t*) Hunt v. Bourne, ubi sup.

ing to the custom of the manor, was a bar to an entail, equally with a recovery of socage lands in the Common Pleas (*u*).

A recovery might have been suffered or a fine levied of lands held by the tenure of ancient demesne in the Court of Common Pleas (*v*); yet the jurisdiction of the court has been doubted (*x*), without, however, any apparent good reason; but as the effect of such a recovery and fine was to make the lands frank-fee so long as they stood in force (*y*), and therefore operating to the lord's prejudice, he might have reversed the same by writ of disceit (*z*), but not by a *scire facias* (*a*); and the rule extended to the king when lord of such a manor as well as a private person (*b*).

As far as respected the lord, the fine in the Court of Common Pleas was *coram non judice*, and consequently no bar to him under the statute of non-claim (*c*), or the statutes of limitation (*d*); for a fine might have established the right of another, but could not have established its own defects (*e*). Some doubts however have been en-

(*u*) *Hunt v. Burn* (or *Browne*), 1 Salk. 57; 3 Salk. 34; and see *Kitch.* 190, cites 50 Ass. 9; 2 Cru. 162; *Green v. Proude*, 1 Mod. 117; 3 Keb. 310; 1 Vent. 107; in this case the court rolls being destroyed, a copy of a recovery of an ancient date under the steward's hand was admitted as evidence; but see ante, p. 591, n. (*m*).

(*v*) *Kitch.* 191; *Preston on Conv.* 1 vol. p. 266; but see ante, p. 591, n. (*m*).

(*x*) 1 Cru. 86; and see 2 Inst. 513.

(*y*) 2 Inst. 513; 4 Inst. 270; *Kitch.* 191, 192; 1 Roll. Abr. 324 (I.), pl. 1 to 7 incl.; *Br. Aunc. Dem.* pl. 12; *Fitz. Abr. Cause de remover plee*, pl. 10; 1 Salk. 57, in *Hunt v. Burn*; ante, p. 565, n. (*o*). So equally in a recovery at the common law in an assize, 11 Hen. 4, 86; 2 Vin. Abr. 488, pl. 4. So a recovery in a *præcipe quod reddat*, F. N. B. 13 C.; but the lands were not frank-fee before judgment, 2 E. 3, 26; *Kitch.* 191. A fine levied in C. B. by tenant in ancient demesne, in a *warrantia chartæ*, did not make the land frank-fee, for the land did not pass by it; 21 E. 3, 32 b.; 1 Roll. Abr. 324, pl. 6; 2 Vin. Abr. 488, pl. 6.

(*z*) 1 E. 3, 5, 26 b; 2 Vin. Abr. 497; *Zouch v. Thompson*, 1 Salk. 210; 3 Salk. 35; *Earl of Plymouth v. James*, *Lutw.* 711; *Humfry v. Bathurst*, ib. 740; *Rex v. Firebrass*, *Pra. Reg. C. P.* 373; *Rex v.*

Comyns, ib. 374; *Griffith & Agard*, 3 Leo. 117: in this case it was held to be sufficient that the words "*cujus hæres ipse est*" were in the body of the writ without stating in the beginning of the writ, that the plaintiff was cousin and heir, &c.; and that the allegation *de antiquo dominico domine reginæ Angliæ* was good, without saying *coronæ suæ*, &c. And the author apprehends that the writ was not in the nature of a writ of error, and consequently that the limitation of twenty years, by 10 & 11 Will. 3, c. 14, did not extend to the writ of disceit; and see 2 *Preston on Conv.* 102. For the form of the writ of disceit, vide 1 *Lutw.* 711; but see reference to the act of the 3 & 4 Will. 4, c. 27; and 3 & 4 Will. 4, c. 74, ante, p. 591, n. (*m*).

(*a*) *Zouch v. Thompson*, 3 Lev. 419.

(*b*) 7 Hen. 4, 27; *Br. Aunc. Dem.* pl. 13; ib. 15, cites 11 Hen. 4, 85; F. N. B. 97 D. (n. b & c); *Rex v. Mead*, 2 Wils. 17; *Stowel v. Lord Zouch*, *Plowd.* 370; 1 And. 74.

(*c*) *Zouch v. Thompson*, 1 Salk. 210; S. C. 3 Salk. 35; S. C. *Lord Raym.* 179; *Cockman v. Farrer*, *Skin.* 14; *Plowd.* 370; 3 T. R. 173; and see 2 Vin. Abr. 497 (Q.); F. N. B. 13 C. (n. a.); *Br. Aunc. Dem.* pl. 39.

(*d*) *Com. Dig.* 348, E. 2.

(*e*) *Zouch v. Thompson*, sup.

tertained, whether a second fine in the Court of Common Pleas would not have operated as a bar to the lord under the statute of nonclaim after five years (*f*); and it should certainly seem, that a fine of elder date would have hindered the reversal of a fine of later date by writ of disceit, but not *e converso* (*g*).

The lord in pleading need not have set forth any estate, it having been sufficient that he was *dominus pro tempore* (*h*); even a termor might have had the writ of disceit (*i*). And if the lord's estate was determined it must have been shown on the other side (*k*); nor was it necessary to show before whom the court was held, but only that the lands were pleadable *in curia manerii* (*l*).

When a fine was reversed by a writ of disceit it ceased to be binding on the parties themselves (*m*), and consequently on the issue in tail (*n*); but whilst the fine remained in force, the tenancy was changed by way of estoppel, and the parties themselves were bound (*o*); so also was a disseisee (*p*).

It should seem, however, that a particular course of descent in ancient demesne lands would not have been changed by a fine at common law, inasmuch as a custom governing the descent runs with the land, and is in respect of the land and not of the seigniorie (*q*), the same as in gavelkind lands, the custom whereof was not changed by a fine or recovery at common law (*r*): but it has been said, that a peculiar customary descent in gavelkind lands runs not with the land simply, but by reason of the ancient demesne, and that the custom would therefore have been destroyed by a fine at common law (*s*).

(*f*) 2 Inst. 518; Plowd. 370, marg.; Lord Zouch v. Bamfield, 1 And. 172; Cockman v. Farrer, sup.; S. C. Sir T. Raym. 462, where, referring to 2 Inst. 518, that a fine is a bar after five years, it is said, "it is intended another fine, and not the same which was first levied."

(*g*) F. N. B. 97 D. (n. b), cites 21 E. 3, 25, 26.

(*h*) Zouch v. Thompson, 1 Salk. 210; S. C. 3 Salk. 35; S. C. 3 Lev. 419.

(*i*) 1 E. 3, 5, 26 b; Earl of Plymouth v. James, 1 Lutw. 713.

(*k*) Zouch v. Thompson, ubi sup.

(*l*) Earl of Plymouth v. James, ubi sup.

(*m*) 4 Inst. 270; Kitch. 191, cites 8 E. 4, 6; 3 Hen. 4, 6; Lampet's case, 10 Co. 50 a.

(*n*) Cary v. Dancy, Cro. Eliz. 471 b.

(*o*) 21 E. 3, 25; F. N. B. 13 C. (n. a); 2 Leo. 192, ca. 240. Pending a writ of right close, the tenant accepted a fine *come cco*, &c., yet the land remained ancient de-

mesne as to that action; 12 Hen. 7; Rot. 103; F. N. B. 13 C. n. marg.

(*p*) 7 Hen. 4, 3; F. N. B. 13 C. (n. a).

(*q*) Dy. 72 b, pl. 4; Dal. 12, pl. 21, per Hale and Brown, Just.; and see 49 E. 3, 8, per Kirton, Just., 49 E. 3, 7, 8; Br. Abr. Aunc. Dem. pl. 8; ib. Confirmation, pl. 5.

(*r*) Finch's Law, 15; Rob. Gav. [3rd ed. by Wilson], p. 90.

(*s*) Finch's Law, 16, cites 6 E. 6, & Dy. sup. n. (*g*); vide also Dal. 12, per Montague, C. J., cited Rob. Gav. [3rd ed.], p. 91. Customs merely collateral, and not incident to the tenure, are not necessarily destroyed by a change in the tenure, or in other words, the *estate* of the tenant may continue, though the *quality* of it be altered. See Bro. Abr. as in n. (*q*), sup.; vide also Doe & Huntington, 4 East, 282, 290, 293; Wiseman v. Cotton, 1 Lev. 79; S. C. 1 Sid. 135.

Although a fine of ancient demesne lands could not have been reversed as to one person, and remained good as to another, yet it might have been reversed as to part of the land, and remained good as to the residue (*t*).

Of the Manner of bringing the Writ of Disceit.

When a fine was levied of ancient demesne lands in the Common Pleas, the ter-tenant was the person against whom the writ of *disceit* properly lay (*u*); and persons to whom estates in remainder were limited by the fine need not have been named in the writ (*x*), but those in remainder were to be summoned by *scire facias* to show cause if they could, why the fine should not be reversed (*y*).

The writ of *disceit* might have been brought against the conuzee as well as the conuzor, and against the heir of the conuzor or conuzee, as the fine worked a real disceit and not a personal tort only (*z*). It might have been brought, the author apprehends, against the conuzor or conuzee alone (*a*), but then there must have been a *scire facias* against the ter-tenant (*b*).

In an action on the case in nature of disceit brought against the vouchee only, to reverse a recovery of lands in ancient demesne, the Court of C. B. held that the demandant and tenant also ought to have been before the court, to prevent collusion between the lord of the manor and vouchee (*c*); and it was agreed that the action should be discontinued, and a new action brought against the demandant, tenant, and vouchee.

It has been held that if the conuzee was in possession, and the conuzor released to him by deed all his right, though the fine should

(*t*) F. N. B. 98 P.; 17 E. 3, 31; 21 E. 3, 20; Fitz. Abr. Disceit, pl. 37, 44; 1 Lord Raym. 178, 179, in *Zouch v. Thompson*; 1 Lutw. 713; Keilw. 43, pl. 10; *Lee & Loveday*, 1 Leo. 290; S. C. 3 Leo. 120.

(*u*) 16 E. 3, 66; Lutw. 713, in the *Earl of Plymouth v. James*, cites Fitz. Fines, 30; *Zouch v. Thompson*, 1 Salk. 210; S. C. 3 Salk. 35; F. N. B. 97 D. (n. b & c.)

(*x*) F. N. B. 97 D. (n. b & c); 2 Vin. Abr. 496, (P. 2), pl. 1, cites Thel. Dig. 48, lib. 5, cap. 17, s. 2, citing Trin. 26 E. 3, 65.

(*y*) 21 Ass. 79 b, pl. 13; Br. Disceit, pl. 21, cites 21 Ass. 13; 2 Vin. Abr. 497 (R.), pl. 2, marg.; F. N. B. 97 D. (n. c), cites 21 E. 3, 56.

(*z*) *Zouch v. Thompson*, sup.; yet it seems that the writ did not abate by the death of the conuzee, the action being trespass only in its nature; *King v. Due* (or *Dewe & Kirley's case*), 3 Leo. 3; S. C. Mo. 13, pl. 49.

(*a*) Win. Ent. 26; Herne, 93; Lex Man. 36, marg.; F. N. B. 97 D. (n. c).

(*b*) 7 Hen. 4, 44; 8 Hen. 4, 29; F. N. B. 97 D. (n. c). In Vent. 211, (Anon.,) it is said, "In a writ of disceit to reverse a fine of land in ancient demesne, after assignment the conuzee shall be made party. So in a writ of error, though the ter-tenant shall not be turned out of possession without a *scire facias*."

(*c*) *Rex v. Hadlow*, 2 Sir W. Bl. 1170.

have been afterwards avoided, yet the conuzee should hold the lands by virtue of the release (*d*); and yet after the fine levied, the conuzor had no right in the land, but only a possibility to have the land again after the fine made void by a writ of *disceit* (*e*): so also the estate of the conuzee should stand after reversal of the fine, if confirmed by the heir of the conuzor (*f*): and after a reversal of the fine, the heir of the conuzor should not enter upon the *ter-tenant*, without a *scire facias* (*g*).

By what Acts Ancient Demesne Lands become Frank-fee.

Ancient demesne lands, as we have already seen (*h*), might have become frank-fee by a fine or recovery in the Court of Common Pleas; and if the lord was a party to a fine at common law, he should never afterwards have a writ of *disceit* (*i*): they were also made frank-fee by the lord's joining with the tenant in a fine upon a writ of warranty of charters (*k*).

A fine, with a grant and render to the tenant *without execution*, would likewise have made the land frank-fee (*l*). So also a fine upon a release with warranty to the tenant (*m*); but it appears to be doubtful whether ancient demesne lands would have become frank-fee by a fine upon a release without warranty (*n*).

It should seem that a fine levied by the tenant without any original writ would have made the land frank-fee till reversed (*o*).

And when lands held in ancient demesne escheat to the lord, they become frank-fee, as he then holds them of the lord paramount (*p*); and if he be disseised thereof, his remedy is in the courts of common law (*q*).

Again, if ancient demesne lands come to the king, they are frank-fee (*r*), even though the king grant them over again to another in fee

(*d*) F. N. B. 98 A.; Kitch. 191; Lampet's case, 10 Co. 50 a.

(*e*) Lampet's case, *sup*.

(*f*) Drew Barrantine's case, 3 Leo. 12.

(*g*) Cary v. Dancy, Cro. Eliz. 471 b; Lee & Loveday, 1 Leo. 290; 3 Leo. 120.

(*h*) Ante, p. 593.

(*i*) 30 E. 3, 13 b; F. N. B. 13 C. (n. a).

(*k*) 21 E. 3, 32 b; 1 Roll. Abr. 325, pl. 27. Contra, if such a fine was levied by the tenant alone, *ib.* 324, pl. 6, cites S. C. See reference to 3 & 4 Will. 4, c. 27, (and by which the writ of *warrantia chartæ* was abolished,) ante, p. 585, n. (*d*).

(*l*) 40 E. 3, 4 b; 1 Roll. Abr. 324 (I.)

pl. 2; and see Br. Aunc. Dem. pl. 4; 2 Vin. Abr. 488, pl. 2.

(*m*) 21 E. 3, 25; 1 Roll. Abr. 324, pl. 3. And see Griffith v. Clarke, Mo. 143.

(*n*) 40 E. 3, 4 b; 1 Roll. Abr. 324, pl. 5.

(*o*) 26 H. 8, Ass. 13; 1 Roll. Abr. 324, pl. 7.

(*p*) Kitch. 191, cites 18 Ed. 3; 19 Com. Dig. Aunc. Dem. (C. 2).

(*q*) 41 Ass. 7; Br. Aunc. Dem. pl. 34; Fitz. Aunc. Dem. pl. 18.

(*r*) Kitch. 190, 191; 1 Roll. Abr. 324, pl. 9, cites 17 E. 3, 52, 75 B.; 21 E. 3, 46 b, cites also contra 18 E. 3, 19, 21 E. 3, 56, 21 Ass. 13.

or for life (*s*); and therefore to prove the land frank-fee, it is sufficient to show the feoffment or charter of the king (*t*): so if the king give lands of ancient demesne, to hold in *frank-almoign*, they become frank-fee (*u*).

If the lord confirm ancient demesne lands to the tenant, to hold by the same services, there could be no change of tenure, the author apprehends, except such confirmation should have been by fine *come ceo*, &c. (*x*); but if the lord confirm to the tenant to hold *freely*, by the services before due, this makes the land frank-fee (*y*); yet the tenure only is changed, and not the estate of the tenant (*z*).

Upon a confirmation by the lord to hold by less services, or by certain services for all services, it would seem not to be fully settled whether the land would become frank-fee or not (*a*).

But if the lord enfeoff another of the tenancy (*b*), even with a saving of the ancient services (*c*), the land will become frank-fee. And it has been decided that a release by the lord, *by fine*, of all services and *customs*, excepting certain specified services, would have extinguished the tenure of ancient demesne (*d*); and that a deed of confirmation to hold by certain services, *at common law*, will discharge ancient demesne lands from the customs of the manor and make them frank-fee, although the estate of the tenant would not be

(*s*) Kitch. 191, cites 13 H. 4, 7; 1 Roll. Abr. 324, pl. 10, cites 11 H. 4, 86, a, b; Br. Aunc. Dem. pl. 15.

(*t*) F. N. B. 13 C. But if a manor of ancient demesne come to the king, and he alien it to another, the lands held of the manor continue ancient demesne, but the demesnes are frank-fee, 21 E. 3, 56; 21 Ass. 13; Br. Aunc. Dem. pl. 32; 1 Roll. Abr. 324, pl. 8.

(*u*) Kitch. 191, cites 6 H. 4, 2. So also if the lord, before the stat. of *quia emptores*, had enfeoffed another of ancient demesne land, to hold by knights' service, for all land in ancient demesne is by *socage* only; F. N. B. 13 D.; ib. 14 B. & C.; 4 Inst. 270.

(*x*) 30 E. 3, 13 b; 1 Roll. Abr. 325, pl. 28; Griffith v. Clarke, Mo. 143; ante, p. 574.

(*y*) 30 E. 3, 13; 1 Roll. Abr. 325, pl. 23; but see Fitz. Abr. Aunc. Dem. pl. 30.

(*z*) Kitch. 191, cites 49 E. 3, 7; Beaumont's case, 9 Co. 140.

(*a*) In favour of the lands becoming

frank-fee, vide 21 E. 3, 32 b; Fitz. Cause de remover ple, 18; 21 E. 3, 33; 2 Vin. Abr. 491, pl. 25, 26, 30; Com. Dig. Anc. Dem. (C. 2.) See contra 30 E. 3, 12 b; Fitz. Aunc. Dem. pl. 30; Br. Aunc. Dem. pl. 18, cites 21 E. 3, 32, and states that the plea was removed out of ancient demesne, the tenant claiming to hold at common law, and that the better opinion was that the confirmation did not alter the estate, nor the nature of the land. See also 2 Vin. Abr. 491, pl. 25, marg.; F. N. B. 15 A. n. b. Confirmation to hold by meaner service no frank-fee; Kitch. 191, cites 30 E. 3, 16.

(*b*) 1 Roll. Abr. 324, pl. 12; ib. 326, pl. 3.

(*c*) For he cannot hold by the ancient services; 1 Roll. Abr. 325, pl. 20; Fitz. Aunc. Dem. pl. 41.

(*d*) Griffith v. Clarke, Mo. 143. N.B. the fine was levied in the time of Ed. 2, and of course after the stat. of *quia emptores*, and not previously as supposed by Mr. Watkins, see 1 Cop. 368.

changed otherwise than in quality (*e*). Again, we have seen that a confirmation to the tenant of customary freehold lands discharged of all *customs* and services, excepting certain rent and suit of court, extinguishes the customary tenure, and converts it into free and common socage (*f*).

But the tenure of ancient demesne will sometimes be restored; for instance, if ancient demesne lands come to the king, and the king regrant them, *to be held of the same manor*, they again become ancient demesne (*g*).

And if the king, seised of land in ancient demesne, grant it out for life, it is frank-fee for the time only (*h*).

It is said also that if the king seize ancient demesne land, without title, and grant it to another, and the patent be repealed, and he who has right is restored to the land, it will become ancient demesne again (*i*).

If the lord confirm land of ancient demesne tenure to the tenant, to hold by certain services for all services, during life, the land will be frank-fee during life only, and afterwards become ancient demesne again (*k*).

So also if the lord confirm to a disseisor, to hold at common law, if the disseisee re-enter or recover, the land shall be ancient demesne again (*l*).

It has been said, that if the lord release the services of ancient demesne land for a certain time, the land will become frank-fee for the time (*m*), but this seems to be very questionable (*n*).

Although after a fine of ancient demesne lands at common law no fine could have been levied, or recovery suffered of such lands in the manor court, until the fine at common law should have been reversed by a writ of *disceit* (*o*), yet it should seem that a person claiming

(*e*) Per Belknap, C. J., 49 E. 3, 7; Br. Aunc. Dem. pl. 8; ib. Confirmation, pl. 5; Fitz. Avowrie, pl. 59; ib. Aunc. Dem. pl. 42; Beaumont's case, 9 Co. 140; ante, tit. "Customary Freeholds," p. 574.

(*f*) Doe & Huntington, 4 East, 271; ante, p. 573 et. seq.

(*g*) 21 Ass. 13; Kitch. 190. But if granted to hold of another manor, the lands would remain frank-fee; F. N. B. 13 C.

(*h*) 11 H. 4, 84; Kitch. 191; ib. 192, cites 17 E. 3, 52; but see 2 Vin. Abr. 489, pl. 10.

(*i*) 1 Roll. Abr. 326, (L.) pl. 4, cites 21 E. 3, 46 b.

(*k*) 21 E. 3, 33; 1 Roll. Abr. 325, pl. 30.

(*l*) 1 Roll. Abr. 326 (L.), pl. 1, cites 49 E. 3, 9. But in 50 E. 3, 10, 25, it was held that if the lord disseise the tenant, and *make a feoffment*, and after the tenant recover in ancient demesne, yet the seigniority is not revived; 2 Vin. Abr. 493 (L.), pl. 2; Br. Aunc. Dem. pl. 6, 10. "The coming of the land into the hands of the lord does not change the nature of it, unless he makes a feoffment thereof;" 2 Vin. Abr. 493 (L.), pl. 3, marg. cites 21 Ass. 13.

(*m*) See 1 Roll. Abr. 325, pl. 31.

(*n*) Ib. cites contra, 30 E. 3, 13 b.

(*o*) Kitch. 191; ante, p. 706.

under a *paramount* title must sue at common law, so long as the land remains frank-fee in the hands of the immediate possessor (*p*); but on recovery at common law by a disseissee of ancient demesne lands, after a fine by the disseisor, the lands would have been ancient demesne again (*q*). It appears, however, that the election to sue in the manor court for the recovery of ancient demesne lands is not taken away in all cases by the lands becoming frank-fee; for although a disseisin by the lord will make ancient demesne lands frank-fee as to him so long as they remain in his hands (*r*), yet the tenant had his option in such a case, to sue either by writ of right close or at common law (*s*).

(*p*) But see 50 E. 3, 24 b; 1 Roll. Abr. 326 (L.), pl. 3, where it is said, that if the land be made frank-fee as to those in possession, yet it shall not be said to be frank-fee as to those who claim paramount this making of it frank-fee.

(*q*) 3 E. 3, 33; 1 Roll. Abr. 326 (L.), pl. 3, cites 50 E. 3, 24 b. Therefore, if in such case judgment be given in the court of ancient demesne, and the recoveror enters, in trespass brought against him for the entry, he cannot justify by force of the

recovery there, for it was *coram non judice*; F. N. B. 13 C.; ib. (n. a), cites 7 H. 4, 3. And see 2 Preston on Conv. 102.

(*r*) 20 H. 6, 33, 41, Ass. 7; F. N. B. 12 E.; 1 Roll. Abr. 325, pl. 17.

(*s*) 30 E. 3, 13, 41, Ass. 7; Fitz. Aunc. Dem. pl. 18; F. N. B. 12 E.; 1 Roll. Abr. 325, pl. 18.

But as to the writ of right close, vide reference to the act of 3 & 4 W. 4, c. 27, ante, p. 585, n. (*d*). And see the act in the Appendix.

END OF THE SECOND PART.

PART THE THIRD.

CHAP. XXI.

OF THE JURISDICTION OF COURTS BARON^(a).*Origin and Nature of the Court Baron.*

A COURT BARON, which it is to be recollected is not a court of re-

(a) The style of the court is *Curia Baronis E. C. militis manerii sui prædicti*, (having the manor's name written in the margin,) *tent' tali die, &c. Coram A. B. seneschallo ibidem*; 4 Inst, 268.

Curia (court) is a place where justice is judicially administered, and is derived à *cura, quia in curiis publicis curas gerebant*; Co. Lit. 58 a. *Curia*, which occasionally seems to have implied the court or manor house only of the lord, in one or two entries in Domesday-book appears to have a more immediate reference to manorial jurisdiction; App. to 2nd General Report from Commiss. on Pub. Records, p. 442, cites tom. 1, fol. 35 b; ib. fol. 265 b.

Baronis.—The title of *Baron*, like all or most of the dignities or titles of honour now existing in England, originated in the feudal institutions of the Normans, and seems about the end of the Conqueror's reign to have supplanted the Saxon title of *Thane*. Those possessing original baronies, and other great lords, having, during the practice of subinfeudation, called their immediate vassals barons, the principal barons, who alone were summoned to attend the councils of the king, and who held of the king *in capite* [2 Inst. 7], were called *barones majores*, or *barones regis* (or *regni*), to distinguish them from the inferior barons, denominated *barones minores*, and who held by knight's service and escuage [4 Inst. 46]. The latter ap-

pear about the end of the reign of King John to have lost the appellation of baron altogether.

Sir William Blackstone observes—"A baron's is the most general and universal title of nobility, for originally every one of the peers of superior rank had also a barony annexed to his other titles. But it hath sometimes happened that when an ancient baron hath been raised to a new degree of peerage, in the course of a few generations the two titles have descended differently, one perhaps to the male descendants, the other to the heirs general; whereby the earldom or other superior title hath subsisted without a barony; and there are also modern instances where earls and viscounts have been created without annexing a barony to their other honours, so that now the rule doth not hold universally that all peers are barons. The original and antiquity of baronies have occasioned great inquiries among our English antiquaries. The most probable opinion seems to be that they were the same with our present lords of manors, to which the name of Court Baron (which is the lord's court, and incident to every manor) gives some countenance. It may be collected from King John's *Magna Charta*, that originally all lords of manors, or barons, that held of the king *in capite*, had seats in the great council or parliament; till about the reign of that prince

cord (*b*), is incident to every manor (*c*), and is incapable of severance under any grant of such court, or any reservation thereof in a grant of the manor (*d*), except only in the case of the king (*e*).

The Court Baron was ordained, as well for the maintenance of the services and duties stipulated for by lords of manors (*f*) on their granting out lands to others in fee, previous to the statute of Westminster 3 (*g*), as for the purpose of determining actions of a personal nature, as debt or trespass (*h*), or detinue of goods (*i*), where the debt or damage was under forty shillings (*k*); and it should seem not only as between the tenants of, but as against strangers coming within, the manor (*l*).

It was adjudged in a late case in the Court of B. R. upon an ap-

the conflux of them became so large and troublesome that the king was obliged to divide them, and summon only the greater barons in person, leaving the small ones to be summoned by the sheriff, and (as it is said) to sit by representation in another house, which gave rise to the separation of the two houses of parliament. By degrees the title came to be confined to the greater barons, or lords of parliament only, and there were no other barons among the peerage but such as were summoned by writ, in respect of the tenure of their lands or baronies, till Richard the Second first made it a mere title of honour, by conferring it on divers persons by his letters patent." See 1 Com. 398, 399.

The principal mansion or castle of every barony was called the *caput baroniae*, and was appropriated to the use of the person entitled to the barony, and when the barony descended to daughters the *caput baroniae* was allotted to the eldest. It appears to have been subject to curtesy, but not to dower; 1 Inst. 39 b, 31 b; 2 Inst. 17.

(*b*) Co. Lit. 117 b; 2 Inst. 143; 4 Inst. 268.

(*c*) 8 H. 7, 1; Kitch. 7, 8, 70; 2 Inst. 99; 4 Inst. 268. Being incident to a manor of common right, it is not lost merely because no court hath, time out of mind, been holden within the manor; Ow. 35.

The entry is sometimes "The Great Court of, &c.:" this is but a Court Baron; Kitch. 156.

(*d*) 10 H. 8, 34; Kitch. 70; Brown v. Goldsmith, 1 Brownl. 175; Mo. 870; Hob. 108; Br. Incidents, pl. 34, cites 19 H. 8.

(*e*) Mo. 870, in Brown v. Goldsmith. See also Sir Robert Acton's case, Dy. 288 b. And it should seem from the same authority that the profits of court may be excepted, even by a common person; ib.; vide also Com. Dig. Cop. (R. 1, Court Baron.)

(*f*) Kitch. 6; Scroggs, in his Pract. of Courts Leet and Courts Baron, pp. 82, 83, says, that these courts were ordained for the three purposes of adjusting differences between lord and lord adjoining; between lord and tenant; and between tenant and tenant. See also ante, pt. 1, p. 2.

(*g*) Ante, pt. 1, p. 2 to 5.

(*h*) Britt. 61; Kitch. 148.

(*i*) Kitch. 146, cites 6 E. 2; 34 Hen. 6, 53. But not detinue of writings; F. N. B. 47 B.; Kitch. 148.

(*k*) 19 Hen. 6, 8; Kitch. 6, 146; 2 Inst. 311; 4 Inst. 264, 268. On attempt to hold plea in court baron of any matter of the value of forty shillings, writ of prohibition lies; Finch. L. 451; 3 Bl. Com. 112; but by charter or prescription, as in the case of the Castle of Dover, a court baron may hold pleas above forty shillings, and award a *capias*; Kitch. 187. These, however, are courts of record; Kitch. 187, 188, cites 6 E. 4, 3.

(*l*) Kitch. 146; Br. Court Baron, pl. 1.

plication for a mandamus to receive and admit a plaint in a manor court (of ancient demesne), that a chartered right in the steward and suitors of the court of determining plaints of debt, (though exceeding forty shillings,) trespass *vi et armis*, &c., was not lost by non-user for near fifty years (*m*).

But *account* does not lie in a court baron (*n*); nor *trespass vi et armis* (*o*).

According to some ancient authorities, the court baron had consueance originally of all pleas of land within the manor, to the exclusion of all other jurisdictions, except by a *remisit curiam* from the lord (*p*), and this by the writ of right patent; but it is to be remembered that the writ of right patent was a command from the king to the lord that he would do right to the party complaining (*q*); and that the plea may be removed by writ of *tolt* into the county court, and from thence into the Court of Common Pleas by writ of *pone* (*r*): it is also to be observed that the issue by writ of right patent never could have been tried in the court baron by the great assize, but by wager of battel only (*s*), and that should issue have been joined there upon the great assize, or foreign plea been pleaded, prohibition lay (*t*).

The reader is here apprised that by prescription a court baron may have jurisdiction as a peculiar, to grant probate and administration, and to take cognizance of testamentary causes (*u*), as in the manor of *Mansfield*, and of *Cowle* and *Caversham* in *Oxfordshire* (*x*), and the honor of *Knaresborough* in *Yorkshire* (*y*).

When and where to be kept.

The Court Baron, it is clear, may be held at any place within the manor (*z*), but it appears formerly to have been thought that it must

(*m*) *Rex v. The Steward & Suitors of the Manor of Havering Atte Bower*, 5 Barn. & Ald. 691; and see *Rex v. The Mayor & Jurats of Hastings*, ib. 692, n.; ante, p. 601, n. (*c*).

(*n*) Kitch. 146, cites 43 E. 3, 19.

(*o*) Co. Litt. 118 a; F. N. B. 47 A.; 2 Inst. 311, 312; Kitch. 146, 148; but see 7 E. 4, 23, cited Kitch. 146.

(*p*) 2 Bac. Abr. 205; Kitch. 147.

(*q*) Kitch. 146, 151.

(*r*) Booth's Real Actions, 86, n.; ib. 89, 90, 91. See further, as to the writ of right patent, post; and note, that it was abolished from 31st Dec. 1834; vide 3 & 4 Will. 4, c. 27, in the Appendix.

(*s*) See the act 59 Geo. 3, c. 46, abolishing appeals of murder, treason, felony, or

other offences, and trial by wager of battel in writs of right.

(*t*) F. N. B. 4 E.; Kitch. 147, who also says, "if plaint of debt or trespass be sued there, and foreign matter is pleaded, it shall not be tried in court baron," cites 1 Hen. 5, 12.

(*u*) *Denham v. Stephenson*, Salk. 41; *Atkins v. Hill*, Cowp. 286; 3 Bac. Abr. 39; Toll. Ex. 49.

(*x*) Off. of Ex. 43.

(*y*) See a recent interesting publication of the customs of the Forest of *Knaresborough*.

(*z*) Kitch. 186, cites 8 Hen. 7, 4, A. 24, E. 3; Co. Cop. s. 31, Tr. 50; Scroggs, 83; Ow. 35.

be held at a place certain (*a*). Although it would be void if held out of the manor (*b*), yet we have already seen that by custom courts for several manors may be held together in one of them (*c*).

It is proper and usual to give fifteen days' notice of the court, including three Sundays; but even three or four days would probably be deemed sufficient (*d*).

The Court Baron is frequently held with the *Court Leet*, and then the various acts are referred to the court to which they respectively apply (*e*): and when there are both *freehold* and *copyhold* lands within the manor, the proceedings of the *common law* and *customary* court baron may be entered on the same roll (*f*).

The Court Baron was anciently held once in every three weeks (*g*), but this was for the convenience of the suitors: and where the jurisdiction as to complaints in nature of personal actions is not established by charter or prescription (*h*), or has fallen into desuetude, the court is more generally held once only in the year (*i*); and the author apprehends that the lord, in the absence of an established usage, could not compel a more frequent attendance of the suitors, without some good cause for it being shown (*k*).

Of the Suitors to the Court, and before whom it is to be kept; and herein of the Steward.

Freehold tenants alone are suitors to the Court Baron, and it is essential to the existence of the court that there should be two suitors

(*a*) So the opinion of Brian, Kitch. 186; Co. Cop. s. 31, Tr. 50.

(*b*) Co. Litt. 58 a; Glanv. 19; Kitch. 186; Ow. 135.

(*c*) Ante, pt. 1, p. 5.

The provisions of the Commutation and Enfranchisement Act, 4 & 5 Vict. c. 35, are not applicable to the common law court baron; but the author apprehends that the enactments for facilitating the commutation of the lord's rights in "rents" and "heriots" must be held to embrace "rents" and "heriots" payable in respect of lands of freehold tenure, which intention is more particularly discoverable in the general words used in the first section of the act, viz. "and in respect of other lands subject to such payments [rents, fines, and heriots], or any of them," and in the form given in s. 12, of the appointment of an attorney [or agent], which commences

thus, "I, A. B. of &c., lord or copyholder, customary tenant, or freeholder."

(*d*) Ante, pt. 1, p. 5.

(*e*) 1 Freem. 525, ca. 707.

(*f*) Co. Litt. 58 a; Com. Dig. Cop. (R. 2).

(*g*) Scroggs, 40, 83; Co. Cop. s. 31, Tr. 50; Co. Litt. 58 a.

(*h*) Post, sect. v.

(*i*) It has been decided that the court baron may be held even at night; Mo. 68, ca. 185; ante, pt. 1, p. 5.

(*k*) See 2 Bac. Abr. 206, marg. where it is said "The Court of B. R. has granted informations against lords and stewards, for oppressing the tenants, by warning courts baron every three weeks, and distraining them to appear or pay a certain sum of money upon no occasion at all, but to extort amercements from them;" but see Scroggs, 40.

ad minimum (l). The reason assigned for this is, that freemen could only be tried by their peers or equals, and that if there be one tenant only, he has no peer or judge, and therefore must appeal to the court of the lord paramount (m). In *Bradshaw v. Lawson* (n) Lord Kenyon said, that this point was so well settled, that cases need not be cited to prove it, and he would only mention that of *Rumsey v. Walton*, which was an action on a judgment alleged to have been recovered in a court baron; and on the trial at the Hereford summer assizes 1760, before Foster, J., the plaintiff proved the court to have been holden before the steward; on which it was objected that such a court could not be legally held without two *free suitors*; and the judge being of that opinion, the plaintiff was nonsuited.

And according to the case of *Chetwode v. Crewe* (o), such suitors could not be created by a conveyance of part of the demesnes of the manor at this day. Suppose a conveyance to be made by one of two free suitors to a corporate body, it would, the author apprehends, be a suspension only of the suit, so that on a subsequent conveyance by the corporation to a person capable of performing suit, a court might be held (p).

And if A. should be the only free suitor, and he should convey part of the land holden by him of the manor to B., the author inclines to think that the right to hold a court baron would revive.

The suitors of the court baron are the judges of it (q), and were so

(l) Br. Court Baron, pl. 23; ib. Comprise, pl. 31; ib. Suit, pl. 17; Kitch. 7, 8; Lit. 73; 2 Roll. Abr. 121; Co. Lit. 58 a; *Tonkin v. Crocker*, 2 Lord Raym. 864; *Rex v. Staverton*, Yelv. 190, 191; Scroggs, 84; Jacob's Law Dict. tit. "Manor."

There is an instance in the Register, f. 11, of a cause being removed out of a court baron by reason of there being but four suitors there; Br. *Cause a Remover Plee*, &c. pl. 35; ib. Suit. 17; and see 1 Watk. on Cop. 9, who says, "But it should seem that there must be more than two frank tenants holding of the manor, to enable the lord to hold a court, for otherwise, if one of those two were the plaintiff, and the other of those two the defendant, the lord would be under some difficulty to try them by their peers."

And by ancient custom in the manor of Dymock, there must be three benchers

of the free suitors at the least, or no court can be holden; 1 Watk. on Cop. 10, n. 2nd ed.

Whether a woman can act as an homager, vide post, p. 736.

See the reference to the Commutation and Enfranchisement Act, 4 & 5 Vic. c. 35, ante, p. 719, (a).

(m) 1 Watk. on Cop. 9.

(n) 4 T. R. 446. See also *Rex v. Mein*, ib. 480. In *Glover v. Lane*, 3 T. R. 447, Lord Kenyon said, "To constitute a manor it is necessary not only that there should be two freeholders within the manor, but two freeholders holding of the manor, *subject to escheats*;" and see *Willea*, 619; ante, pt. 1, p. 6.

(o) *Willea*, 614.

(p) *Tonkin v. Crocker*, 2 Lord Raym. 864.

(q) Kitch. 145, 146; 4 Inst. 268; 4 Co. 26 b, 33 b; *Jentleman's case*, 6 Co.

even in a plea holden by force of a writ of right (*r*); and it has been thought that the court baron could not, even by prescription, be held before the steward, being a thing of common right (*s*); but the authorities are quite the other way (*t*).

It has been said that there is this distinction, namely, that where pleas in a court baron are held by writ, then it must be before suitors, and the bailiff of the lord of the manor; but where without writ, then it must be *coram sectatoribus* only (*u*).

There would certainly seem to be a contradiction in terms, to say that the same persons are suitors and judges of the court; but it is now fully established that the suitors are the judges of the court baron, notwithstanding the expression in some books of authority, that the steward is the prothonotary only of the court (*x*).

The steward, however, is a *constituent* part of the court, and not merely a ministerial officer, as was formerly supposed (*y*).

This question was raised, and fully put at rest, in the case of *Holroyd v. Breare & Holmes* (*z*), which was an action for trespass for breaking and entering the plaintiff's house, and seizing and taking

11 b; Lord Cobham and Browne's case, 1 Leo. 217; *Rex v. Morgan*, 1 Sir W. Bl. 398; *Eure v. Wells*, T. Jones, 23; Lovell & Golston's case, Godb. 68; *ib.* 49, ca. 60; Scroggs, 88; "in a court baron action of debt lieth for the lord himself, because the suitors are judges;" *ib.* 84; Kitch. 145. *Nota per* Fineux and Keble, that in court baron the suitors are judges, and in the leet the steward is judge (12 Hen. 7, 16); Br. tit. Court Baron, &c. pl. 9.

It is not in the court baron alone that the suitors are the judges. "*Nota per* Chock, Justice, that in court baron, county, or hundred, the suitors are judges, and the bailiff and sheriff are only ministers, (6 E. 4, 3;)" Br. tit. Court Baron, &c. pl. 11.

(*r*) "*Nota* that the suitors are judges in county court, court baron and hundred, as well in writ of right patent, as in justices and other suits there; and the sheriff, steward or bailiff are not judges there *quod nota bene* (39 Hen. 6, 5);" Br. tit. Judgment, pl. 118; *Jentleman's case*, *sup.*

(*s*) *Pill or Pell v. Towers*, Cro. Eliz. 791; S. C. Noy, 20; *Armyn v. Appleoft*,

Cro. Jac. 582; 2 D'Anvers, 295, tit. Court Baron; 1 Nels. Abr. 501.

(*t*) 1 Leo. 316, pl. 444; 1 Mod. 173; *Rex v. Morgan*, *sup.*; Tomkins or Tonkin v. Crocker, 2 Salk. 604; S. C. 2 Lord Raym. 860; S. C. Lutw. 1211; Nels. Lex Man. 57, 58; Rast. Ent. 553 a; Co. Ent. 118 b, 570 b; Winch's Ent. 1014; *James v. Tutney*, Cro. Car. 497; Win. 30; *Eure v. Wells*, T. Jones, 23; W. Jones, 434; Mar. 28.

(*u*) *Pells v. Towers*, *sup.*; and see Scroggs, 88; Godb. 49, ca. 60; but in *Jentleman's case*, *sup.*, it was resolved, that be the plea held by writ or without writ, the suitors are judges; vide also Lex Man. 56, pl. 8; *sup. n.* (*r*).

(*x*) *Rex v. Morgan*, *ubi sup.*; *Earl of Shrewsbury's case*, 9 Co. 49 a.

(*y*) See 1 Freem. 473, in *Howard v. Wood*; S. C. T. Jones, 126; S. C. 2 Lev. 245. Calthr. p. 54, 2nd ed., says "The steward doth occupy the part of several persons, that is to say, a judge to order in cases of copyhold, and also a *minister* and register to enter things into the court rolls, and in both these to be indifferent between the lord and his tenants."

(*z*) 2 Barn. & Ald. 473.

his cattle, &c.; the defendants first pleaded the general issue, and secondly justified, the one as steward of the court baron of the manor of *Wakefield*, and the other as his bailiff, stating that on the 12th of September, 1817, at a court of the said manor, holden before certain then suitors of the said court, according to the custom of the said court, one *J. A.* levied his plaint against *Sarah Holroyd*, and afterwards recovered on the plea aforesaid against her 9*l.* 14*s.* for his damages and costs; and the defendant *Breare* on the 5th of December, 1817, as such steward of the manor, caused his precept to be issued to take the goods of the said *Sarah Holroyd* in execution, which precept was delivered to the defendant *Holmes* as bailiff, to be executed, and that by virtue of that precept, the goods in question were by him seized, and the trespasses committed. There was another similar justification, setting out a judgment recovered in the same court at the suit of *J. C.* against *Sarah Holroyd*. At the trial at the summer assizes 1818, for the county of York, before Bayley J., the principal question was, whether the goods which had been seized were wholly or in part the property of the plaintiff, or of *Sarah Holroyd*. The jury found a verdict for the plaintiff. It appeared also that the defendant *Breare* was not in any respect personally concerned in the seizure of the goods, but only as having, in his character of steward of the court baron, signed the precept for taking *Sarah Holroyd's* goods in execution: and on this it was contended, that the steward acted in a judicial and not a ministerial character, and that he was not therefore liable for the acts of his bailiff. This was denied on the other side. The point was reserved by the learned judge, with leave for the defendant *Breare* to move to have a verdict entered for him, in case the court should be of opinion that he was not liable. A rule *nisi* to that effect having been obtained, the plaintiff's counsel now urged that the steward of a court baron was only a ministerial officer, the suitors being the judges of the court, and that it was his duty as their minister to see that their judgments were executed properly: and although no action would lie against a judge for what he might do judicially, yet that it was otherwise in the case of a ministerial officer. They also contended that the steward in the immediate case was answerable, precisely on the same principle as the sheriff was, *viz.* that the law holds it to be his duty to execute the office in person, and therefore makes him answerable *civiliter* for the acts of his officer.

For the defendants it was argued, that no instance being produced in which a similar action had been maintained, went strongly to show that the steward was not liable; and that the distinction between the principal case and that of the sheriff was obvious, for the sheriff was no part of the court out of which the process issued, but that the

steward of the court baron was so, and his situation to be compared to the signer of writs in the superior courts, who could not be liable for a mis-execution of them by the sheriff; and that the passages cited (*a*) only showed that the steward of a court baron was a minister of that court for some purposes, as, for instance, to register their proceedings, and the like; but that they did not show that he was their minister for the purpose of executing their process.

Abbott, C. J., in delivering the opinion of the court, noticed the argument by the plaintiff's counsel that in the court baron the free suitors are the judges, and observed that they certainly were so for the purposes stated in the authorities which had been cited. The court, however, were of opinion that the steward was not merely a minister of that court, but a constituent and essential part of it. The court could not be holden without him. No mandate was directed to him as an officer, but he made his mandate to the bailiff. His lordship further observed, that there was this material distinction between the mandate of the sheriff and that of a steward of a court baron; in the former, the sheriff commands the bailiff to make the levy, and it concludes thus, "so that I may have the same before the court, &c.:" but in the warrant of the steward the bailiff is directed to levy, so that he (the bailiff) may have the same before the court on the day appointed. This, therefore, was more like the writ of the superior court to the sheriff than the warrant of the sheriff to his bailiff. That (added his lordship) would seem to be decisive to show that the bailiff, and not the steward, is the minister of the court baron for the execution of its process, and that he is not the servant of the steward in this respect. The court was therefore of opinion that the steward was not for the particular purpose a minister, but part of the court itself; and if so, the action was not maintainable against him, and the rule for entering a verdict for him was therefore made absolute (*b*).

The above case of *Holroyd v. Breare & Holmes* having overruled the authorities that the steward of a court baron is a ministerial officer only (*c*), goes a great way towards confirming the opinion expressed in some of the books, that a *mandamus* will lie to be restored to the stewardship of a court baron.

(*a*) 4 Inst. 268, c. 57; 1 Inst. 58; Br. tit. Court Baron, pl. 11; ib., tit. Judgment, pl. 118. See these authorities, ante, p. 604, n. (*g*).

(*b*) It was held in a recent case, that the steward of a hundred court, or of a court baron, is not responsible for the misfeasance in the execution of process of the bailiffs of the lord of the hundred or manor, to whom process of execution awarded by

such court is usually directed. But that if the steward directs process to persons named by the party suing out such process, taking an indemnity from such party, he is liable; *Bradley v. Carr, Maude & Wilkinson*, 3 Mann. & Gr. 221.

(*c*) A *mandamus* is never granted to compel a mere ministerial officer to do his duty; *Rex v. Dr. Walker*, Bul. N. P. 199; ante, pt. 1, p. 526.

In *The King v. The Churchwardens of Kingscleere* (d) Hale, C. J., said that a *mandamus* lay for the steward of a court baron "if he be not at will only, because he is an officer of justice(e)." But there are several authorities that a *mandamus* will not lie for a steward of a court baron, "as being a private thing and not concerning the administration of justice(f)."

In *Ile's* case in B. R. (g) *Twisden* said, "it was ruled in 1652 in this court that a *mandamus* did not lie to be restored to a stewardship of a court baron, but of a court leet it did, for there the steward was judge, but of a court baron the suitors are judges." Hale said he was of another opinion, the steward being judge of that part of the court which concerns the copyholds, and register of the other.

The steward being the judge of a customary court would seem, however, to be an insufficient reason for a *mandamus* lying to restore him to the office (h). It is, the author apprehends, the public or private nature of the office alone by which the Court of King's Bench would be influenced at the present day in granting or refusing an application for a *mandamus* to be restored to the stewardship of a court baron; and it is obvious that the steward of the court baron, where pleas of debt are holden and real actions were always formerly commenced, is more in the nature of a public officer than the steward of a customary court, which is for copyhold purposes only, and in which the acts of the steward are chiefly of a ministerial nature.

This section may be properly concluded by reminding the reader that a grant *for life* by deed of the stewardship of a manor, and of the courts thereto belonging, is good (i); and by referring him to the

(d) 2 Lev. 18.

(e) Ante, pt. 1, p. 526. And in the *King v. Stanton*, Cro. Jac. 259, (S. C. Yelv. 192,) Yelverton, Williams and Croke held against the opinion of Fleming, C. J., (Fenner doubting,) that a *quo warranto* lies of a court baron, because "it is matter of right to hold courts, and to administer justice, and to hold pleas, and to draw assemblies of men together, and to swear officers; which if any doth without right, he is to render an account thereof." And see *Scroggs*, 94; *Rex v. Stafferton & Brown*, 1 Bulst. 54; Br. *Quo Warranto*, pl. 4.

But in the *King v. Hulston*, 1 Str. 621, where an information was granted in the nature of a *quo warranto* against the defendant for exercising the office of steward of a court leet, the court said they would not grant it in the case of a court baron,

that being only a private right and no court of record.

It has been refused for holding a court leet in a manor, being a private right; *Rex v. Cann*, T. 10 & 11 G. 2, Andr. 14. See further as to *quo warranto* of court baron, Com. Dig. *Quo Warranto*, (A. & B). And see as to *quo warranto* of court leet, post, ch. 22.

(f) See *Stamp's* case, 1 Sid. 40; *Middleton's* case, ib. 169; *King v. Street*, 8 Mod. 98; Comb. 127. But see Yelv. 191, in *Rex v. Staverton*, where a court baron is described to be a court of justice.

(g) 1 Vent. 153; ante, pt. 1, p. 526.

(h) An application for a *mandamus* to swear in a steward of customary court was once refused by C. J. Holt. See *Anon.*, 12 Mod. 665; ante, pt. 1, p. 526, n. (i).

(i) *Bartlett v. Downes*, 3 Barn. & Cress.

first part of the present work (*k*), where the author has suggested that an infant, being of years of discretion, may preside in a court baron; and that the stewardship of a court baron may be granted in reversion (*l*).

SECTION II.

Of the Services due from Freehold Tenants.

We have *fully* discussed the nature of the services due to the lord of the manor in respect of copyhold land, and *partially* also the nature of those due in respect of land of freehold tenure (*m*). It may, however, be proper to take a brief view of the obligations imposed on the tenant by the original grants under which *socage* lands are held derivatively at this period. And although it is very far from our intention to enter upon a minute consideration of the nature and origin of the feudal polity, or doctrine of tenure, yet a few preliminary observations on the contrasted properties of ancient and modern English tenure may not be deemed unacceptable or inapplicable to the immediate subject of our inquiries.

The feudal constitution (described by Sir Martin Wright (*n*) to be a military policy of the northern conquering nations), which by degrees established itself over the western world to the exclusion of the Roman laws, seems not to have been universally adopted in this country till about the middle of the reign of William the Conqueror (*o*).

Previous to its introduction into England, the possessions of land were *allodial*, a word signifying positive unqualified right, the owner

616; S. C. 5 Dow. & Ry. 526; S. C. 1 Car. & Pay. 522; ante, pt. 1, p. 116.

A grant to two for a term of years is good, for the appointment determines with the lives of the grantees, and will not go to the executors or administrators; ante, pt. 1, p. 115.

And Note—A bishop may grant the stewardship of a manor for life, notwithstanding the stat. 1 Eliz. c. 19, if usually so granted before that statute; Sir John Trelawney v. Bishop of Winchester, 1 Burr. 219. And see Young v. Stoell, Cro. Car. 279; W. Jones, 310; Young v. Fowler, Cro. Car. 555; S. C. Mar. 38; Ridley v. Pownell, 2 Lev. 136.

A bishop grants the stewardship of a manor for life, and says not for whose life,

it shall be for the life of the grantee; Cook v. Younger, Cro. Car. 16.

(*k*) p. 111.

(*l*) p. 116.

(*m*) Ante, pt. 1, ch. 8.

(*n*) Ten. p. 6. And Sir W. Blackstone [2 Com. p. 45] observes, that “the constitution of feuds had its origin from the military policy of the northern or *Celtic* nations, the Goths, the Huns, the Franks, the Vandals, and the Lombards, who all migrating from the same *officina gentium*, as Crag very justly entitles it, poured themselves in vast quantities into all the regions of Europe at the declension of the Roman empire.”

(*o*) Ante, p. 579, n. (*f*).

having the complete and absolute property, and not holding of any particular lord ; whereas a *feud*, *fief* or *fee* denoted stipendiary property, or a tract of land held by gratuitous donation on condition of performing certain stipulated services, chiefly of a military nature. These gifts were originally dependent on the will and pleasure of the grantor, but afterwards were extended to a term of one or more years, subsequently to the life of the feudatory (*p*), and ultimately were made hereditary.

Such grants as were purely military were denominated *proper* feuds, and those in which the consideration moving to the grant, or the services reserved, were not strictly conformable to that character, were deemed *improper* feuds (*q*).

The fundamental maxim of feudal tenure is, that all lands were originally granted by the king, and are therefore holden immediately or mediately of the crown (*r*).

Until the middle of the seventeenth century, a considerable (and according to Sir William Blackstone (*s*) the greatest) part of the lands in England was held by *knight-service* (*t*), (a tenure implying personal military duty,) and principally of the king *in capite*.

The tenure by knight-service was abolished by 12 Car. 2, c. 24 (*u*), and differed very little from a proper feud, being created by pure words of donation (*x*), transferred by livery or investiture, and per-

(*p*) Feudatory or beneficiary estates, when granted at will only, were called *Munera*, and when afterwards granted for life, they were termed *Beneficia*, which word is still retained amongst ecclesiastics, whose estates are called *Benefices* ; and the term *Feuda* was first used when estates began to be granted in perpetuity ; Spelm. Posth. Treat. of Feuds, 4, 6, 9 ; Wright's Ten. 19. Vide as to the distinction between *allodial* and *beneficiary* possessions, Roberts. Hist. Emp. Charles V., p. 258.

(*q*) For a full illustration of this obsolete doctrine, the author would urge an attentive perusal of Sir Martin Wright's introduction to the law of tenures, and of the history of feuds in the early part of Chief Baron Gilbert's treatise on tenures, and also the 4th chap. of the 2nd vol. of Sir William Blackstone's Commentaries. Et vide Harg. & Butl. notes to Co. Lit. 64 a, 191 a.

(*r*) Ante, p. 579, n. (*f*). The note here

referred to shows that our ancestors were not originally beneficiaries, but voluntarily submitted to this fiction of tenure.

(*s*) 2 Com. 73.

(*t*) It should seem that knight-service was the implied tenure, if no particular services were reserved on a grant by the king, prior to the 12 Car. 2. See Dalr. on Feud. Prop. p. 24.

Escuage is sometimes confounded with knight-service [Co. Lit. § 103], but it merely describes the pecuniary assessment, calculated by the amount of a knight's fee, to excuse a personal attendance for which such service was compounded, or perhaps a pecuniary aid reserved in some instances in lieu of personal service ; Wright's Ten. 123 ; 2 Bl. Com. 75.

(*u*) The prerogative of compelling the heir to be knighted when of age, or to pay a fine to the king, was abolished by 16 Car. 1, c. 20 ; 2 Bl. Com. 69, 70.

(*x*) Wright's Ten. 141 ; 2 Bl. Com. 63.

fectured by homage or fealty. This tenure drew to it the advantages of *relief*, and *primer seisin* (*y*), *wardship*, *livery* (*z*), *aid* for knighting the lord's eldest son, and marrying his eldest daughter, and for ransoming the lord's person (*a*), and also *escheat*. The services were occasional, but with us restrained, as in Normandy, to forty days, and not altogether uncertain, as in proper feuds (*b*).

The residue of the lands in England was divided into the three tenures subsisting at the present day, viz.: 1. *free socage* (*c*), (which, with the lands held by knight-service, were alike denominated *frank tenements*;) 2. *pure villenage*: and 3. *privileged villenage*, or *villein socage* (*d*). The properties and diversities of the two latter are fully

(*y*) *Primer seisin* seems to be little more than an additional relief, payable by those who held of the king *in capite*. When a tenant *in capite* died seised of a knight's fee, the king was entitled to receive of the heir, if of age, a year's profits of the land, when in possession, and half a year's profits if held in reversion, expectant on an estate for life. Indeed the king was entitled to enter and receive the profits until livery was sued, which being generally sued within a year and a day after the death of the tenant, it was usual to take the first fruits, or a year's profits of the land. This gave rise to the claim by the Popes of the first year's profits of every benefice by way of first fruits.

(*z*) *Primer seisin* was not paid unless the heir was of age, but if under the age of 21, being a male, or 14, being a female, the lord was entitled to the *wardship*, and was called guardian in chivalry, which gave him the custody of the body and lands, without account, during such minority. And the lord, by the 3 Ed. 1, c. 22, could keep the female heir in ward until 16. The male, on attaining 21, and the female 16, could sue out their *livery* to obtain the lands out of the guardian's hands, and for this half a year's profits of the land were paid. These advantages to the lord excused the infant heir from *livery*, and in the case of tenants *in capite*, from *primer seisin*. The ascertainment of the profits arising from these fruits of tenure suggested the antiquated proceeding of an *inquisitio post mortem*, charging the itinerant justices or justices in eyre to

inquire by a jury of the county (on the decease of any person of fortune) the value of his estate, the tenure of it, and who, and of what age, his heir was; 2 Bl. Com. 68.

(*a*) But the genuine feudal aid appears to have been purely military, and not a contribution to the private necessities of the lord; Wright's Ten. 41. See further as to aids, post, p. 612, n. (*k*); Wright's Ten. p. 40, &c. 105, &c.; Hallam's Europe, 415.

(*b*) Wright's Ten. 140, 141; 2 Bl. Com. 62. The proper knight-service was to attend the king in his wars; but there were other species of knight-service of an honorable nature, as *grand serjeanty*. Some services of *grand serjeanty* are purely military, as to bear the king's banner or his lance in time of war; and others are honorary only, and in time of peace, as to perform certain offices at the king's coronation; and in some cases these services may be executed by deputy; Co. Lit. s. 153, 155, 157. The honorary services of *grand serjeanty* were, as well as the tenure by copy of court roll, reserved by the stat. of 12 Car. 2.

The services of *petit serjeanty*, as to render to the king a war-like weapon, are not mentioned in that statute, but *petit serjeanty* still exists, and is considered to be a dignified branch of *socage* tenure; Co. Lit. 108 b, n. 1.

(*c*) Or free tenure in common *socage*.

(*d*) These are the only lay tenures now subsisting, but it is to be remembered that the tenure of *frank-almoign* (or free alms)

treated of in the first and second parts of the present work (*e*), and the author proposes now to offer some few observations on the nature of socage tenure, and the services incident to it.

Socage is a term as old as Domesday-Book : it first occurs in Glanvil (*f*), and, according to the opinion of our best lawyers, is a tenure *per servitium socæ*, but by Somner (*g*) thought to be derived from the Saxon word *Soc*, importing a privilege, and *Agium*, importing service (*h*).

Socage tenure is at least agreed to have been originally a conventional service of a certain and determinate, and not of a military nature (*i*); in some respects, however, it resembles tenure by knight-service or chivalry, socage land being held of a superior lord by fealty, and subject to relief and escheat, and also (previous to the statute of Charles II.) to aids (*k*), marriage and wardship, (though of a different

was also reserved by the stat. of Car. 2, and which is of a spiritual nature, being the tenure by which religious houses held their lands, and by which many ecclesiastical and eleemosynary foundations hold lands at this day; 2 Bl. Com. 101.

(*e*) Ch. 2, and ch. 19.

(*f*) Somner's Treat. of Gav. 143.

(*g*) Ib. 133, 141. And see 2 Bl. Com. 80, 81.

(*h*) 1 Inst. 86 a. And see Mr. Christian's note on this derivation, 2 Bl. Com. 81, citing Bract. Spelman, &c., against Mr. Somner's and Sir William Blackstone's opinions.

(*i*) Burgage and gavelkind are included in socage tenure. Sir Martin Wright [Ten. 145] says, "All our English fees or holdings, whether they be frank or emphyteuticary, burgage or gavelkind, (though burgage and gavelkind have many qualities different from common socage,) do now fall under the notion of socage tenures, which, though they vary in point of service, *succession*, and the like, as improper feuds, do nevertheless retain the nature of feuds, inasmuch as they are held of some lord or superior by fealty, and usually by some other certain service or acknowledgment; and inasmuch as they yield or pay relief, and may escheat" And see Co. Lit. s. 162.

The student is reminded that the descent in burgage-tenure is sometimes (by force of the custom called *Borough English*) to the youngest son, and in gavelkind tenure

is to all the sons equally.

And he is referred on the subject of descent of copyhold lands enfranchised under the act of 4 & 5 Vict. c. 35, to a note of the author, ante, pt. 1, n. (*b*), p. 26.

(*k*) The aid *de relief* was taken by inferior lords, being a sum to enable them to pay their fines for relief or seisin to the lord paramount; Wright's Ten. 107, cites Madox, Hist. of the Excheq. 428; Glanv. lib. 9, cap. 8. And inferior lords frequently took aids to enable them not only to pay their fines to the king, but even their debts. All, however, except the above three ancient aids, were abolished as to inferior lords by King John's Charter, c. 12, 15, which also ordained that no aids should be taken by the king without consent of parliament. This provision was omitted in Henry the Third's Charter, and the old aids re-exacted, until, by stat. 25 Ed 1, c. 5, 6, the clause in the charter of King John was revived. Aids were completely arbitrary until King John's Charter, and were not fully ascertained until the stat. West. 1, 3 Ed. 1, c. 36, which fixed the aid of a knight's fee at 20s., and of socage lands, of the value of 20*l.* a year, at 20s. This only extended to inferior lords, but the same provisions were made as to the king's tenants *in capite* by 25 Ed. 3, c. 11. The aid for ransoming the lord's person was, as a thing of course, still left uncertain; Wright's Ten. 108 et seq.; 2 Bl. Com. 63 et seq.

nature from those incident to knight-service,) and to fines for alienation, when held of the king *in capite* (*l*).

But since the abolition act of 12 Car. II., the only services incidental to lands of socage or freehold tenure are those of which the author will now treat; premising that, upon thus briefly introducing to the reader's consideration the subject of ancient and modern English tenure, it may not be thought irrelevant to notice that the more general opinion is, that freehold lands were devisable before the Conquest, but at that period, or soon after, the power of disposition ceased as a consequence of feudal tenure, except as to certain socage lands by the custom of some cities and boroughs (*m*).

FEALTY.—(*And herein of the ancient tribute of homage.*)—From the earliest period of the feudal system, the service of *fealty* was incidental to and inseparable from every tenure, with the exception of tenure in *frank-almoign* (*n*), and such as hold at will or by sufferance (*o*), so much so that if lands were granted without the reservation of fealty, the tenure was deemed to be *allodial* (*p*), but nevertheless the oath of fealty might always be dispensed with.

When feuds became hereditary, besides an oath of fealty, the parent (as Mr. Justice Blackstone has observed) of our oath of allegiance (*q*), the tenant (or vassal), after the ceremony of corporal investiture, a form imitated in our modern feoffments of land, usually did *homage* to his lord, which differed from the former in this respect, namely, that the fealty was a profession of fidelity, and the homage an acknowledgment of tenure (*r*). Homage was taken in the following manner, viz., the tenant being ungirt and uncovered, and kneeling before the lord, holding his hands close together between the hands of his lord, spoke thus:—"I become your man from this day

(*l*) 2 Bl. Com. 89.

(*m*) And it is observable that upon a distinction raised after the stat. of quia emptores, between the *land* and the *use* or profits of the land, and the invention of *feoffments to uses*, the use or profits could be disposed of by will even before the stat. 27 Hen. 8, c. 10.

Socage lands and two-thirds of lands held by knight-service were made devisable by 32 & 34 Hen. 8, and the latter being converted into socage tenure in the 12 Car. 2, all lands became devisable, copyholds excepted; vide 32 Hen. 8, c. 1; 34 & 35 Hen. 8, c. 5; 12 Car. 2, c. 25; 29 Car. 2, c. 3; Co. Lit. 111 b, n. 1, 4; ante, pt. 1, p. 88; vide also Co. Lit. 111

b, n. 1, 4; Wright's Ten. 172 et seq.

(*n*) 9 Co. 123, in Anth. Lowe's case; Co. Lit. s. 131; Wright's Ten. 35, 139. Vide also a learned comment on the oath of fealty, Sulliv. Feud. L. lect. 6, p. 68.

(*o*) Co. Lit. 67 b, n. 2; ib. 68 b, n. 5.

(*p*) Ante, p. 609.

(*q*) And see Sulliv. Feud. L. p. 283.

(*r*) Homage of every kind, as far as it relates to tenures, is now wholly at an end; 12 Car. 2, c. 24; Co. Lit. 105 a, n. 1. See a general observation on the reason for discharging tenures from homage, and on the advantages arising from it whilst it remained, both to the lord and tenant, particularly to the latter where the homage was auncestrel, ib. 67 b, n. 1.

forth for life and member, and for wordly honour, and shall owe you my faith for the land I hold of you, saving the faith I owe unto the sovereign Lord my King, and to my other lords (s)."

And this mode of taking a pledge from each tenant signified protection and warranty on the part of the lord (t). But this in later times was held to be peculiar to *homage auncestrel* (u).

Homage was performed only when the grant was of an estate of inheritance, that is, in fee-simple, or fee-tail (x); but fealty is to be done by tenant for life (y), or even for years if he hold immediately by grant or lease from the lord, but not by tenant at will, except by custom (z).

If required, *fealty* is to be iterated on every change of the lord, and on every new purchase or descent, it differing in this respect from *homage*, which, except in special cases, is only due once, so that if other lands held of the same lord descended to a person who had already done homage to the lord, no further homage could be required (a).

It should seem that homage as well as fealty was done by women when of age (b), but that homage was not exacted from *femes covert*, the husband doing both *fealty* and *homage* to the lord for the lands of his wife, if they had issue when livery was sued; and doing *fealty* (c), but not *homage*, if they had no issue (d). And therefore until there was issue, entitling the husband to curtesy, the homage seems to have been suspended (e).

(s) Bract. f. 80; Glanv. l. 9, c. 1; Britt. f. 173; Flet. l. 3, c. 16; Co. Lit. tit. Homage.

(t) Bract. f. 80; Co. Lit. 67 b, n. 1.

(u) Ib.; 2 Inst. 11. And see Co. Lit. s. 143; F. N. B. 134 F.

Littleton, in treating of Homage Auncestrel, tells us that such homage is where the tenant *and his ancestors, whose heir he is*, have held the same lands of the same lord, *and his ancestors, whose heir the lord is*, time out of memory of man, by homage, and have done to them homage, which seems to be a strange and unusual tenure, and scarce possible to continue between the same lord and tenant, and their ancestors, and of the same lands, and this time out of mind. And Lord Coke doubted whether, even in his time, there was any relic of this tenure in England, because of this double prescription, both in the blood of the lord and the tenant; Co. Lit. s. 143; ib. 67 b, n. 1, 105 a, n. 1. At all events,

the tenure of *homage auncestrel*, as implied in the general words "all tenure by homage," was taken away by the stat. of 12 Car. 2, c. 24; Co. Lit. 105 a, n. 1.

(x) Co. Lit. s. 90.

(y) Co. Lit. s. 93.

(z) Kitch. 260; Co. Lit. s. 84, ib. s. 132; ib. 93 a, n. 1. Even as to tenant for years, see the Year-Books referred to in n. 2, Co. Lit. 67 b.

(a) 21 H. 8; Fealty, 8; Kitch. 260; Co. Lit. 68 b, n. 5.

(b) F. N. B. 257, F.; Co. Lit. 65 b, 66 a. But see contra, Glanv. lib. 9, c. 1.

(c) Mr. Watkins was of opinion that the wife only should do fealty for *copyhold* lands, she alone being admitted tenant; ante, pt. 1, p. 361; and see Comb's case, 9 Co. 76 a.

(d) F. N. B. 257, F.; Kitch. 260.

(e) Br. Fealty & Homage, pl. 10, 16; F. N. B. 257, F. n. b. But see Co. Lit. 66 a, &c., where Littleton gives an instance

An infant, though he might have performed homage, cannot do fealty, it should seem, as that is only to be done upon oath (*f*); and as no man can swear by attorney, fealty must necessarily be done in person (*g*).

The lord in his own person could alone receive the tribute of homage (*h*), and for this reason a corporation who can appear only by attorney could not take homage (*i*); but fealty might always be received by the steward of the lord's court or the bailiff (*k*).

The oath of fealty or pledge of fidelity (and which was consequential to homage), used always to be made immediately after the tenant had performed his homage, and was formerly deemed of the first importance, the seisin of fealty being a sufficient seisin of all other services (*l*). The oath is now usually administered, or rather respited, and an entry thereof made on the manor rolls (*m*) at the first court after the new tenant's title accrues, and the latter is not only the more general, but the more advisable mode, except, indeed, in those instances (if any exist) where fealty is the only service rendered (*n*).

SUIT OF COURT(*o*).—The author has already shown that a court of joint homage by the husband and wife, the husband alone repeating the words, which Lord Coke says must mean before issue had between them.

(*f*) Bract. 78; Co. Lit. 65 b; 2 Inst. 11. But Kitch. p. 260, says, "In a *per que servitia* an infant was constrained to attorn, and to make fealty, notwithstanding his non-age," cites 20 Ed. 3, tit. 19. And see 24 E. 3, 63, 64; Hal. MSS. cited N. 5, Co. Lit. 65 b.

(*g*) Co. Lit. 68 a; Comb's case, 9 Co. 76. See a singular instance of fealty by attorney, Hal. MSS. cited Co. Lit. 68 a, n. 5. In France both homage and fealty may be done by proxy, if the lord consents, and by the custom of some of the provinces even without; *ib*.

(*h*) Bract. l. 2, f. 80; Co Lit. s. 92.

(*i*) Kitch. 260.

(*k*) Co. Lit. s. 92; Co. Cop. s. 20, Tr. 15; ante, pt. 1, p. 361.

(*l*) Bevil's case, 4 Co. 8; Co. Lit. 68 b. That seisin of fealty doth not estop the tenant from traversing the seisin of other services, vide 41 E. 3, 25, 50; Lilburne's case, Hal. MSS. Co. Lit. 68 b, n. (6).

(*m*) See ante, pt. 1, p. 362.

(*n*) Co. Lit. 68 b, n. (5). Kitch. 290, says, "Where the writing is to hold by certain service for all services, as to hold by fealty for all services, [he] shall make no suit. Marl. chap. 9." And see further as to fealty, Sulliv. 68; ante, pt. 1, ch. 8. Vide also as to the lord's remedy for fealty, post, p. 616. It appears by Kitch. p. 261, that the lord is not constrained to avow on a feoffee, even in case of the death of his tenant, without notice of the feoffment, but may distrain the feoffee and avow upon the feoffor, and in the case of the tenant's death after such alienation, the lord may distrain the issue and avow upon him. And, indeed, by stat. 21 H. 8, c. 19, he need not avow or justify of any person certain. As to the remedy for neglect of fealty, see *infra*, p. 616, n. (*u*). And, N.B., it was held in Bevil's case, 4 Co. 10 b, and in Bennet v. King, 3 Lev. 21, that fealty, and such casual services as might not happen within the periods mentioned in the act, were not within the statute of limitation, 32 H. 8. And see Co. Lit. 115 a; ante, pt. 1, p. 481.

(*o*) By the interpretation clause (s. 102)

baron is incident to every manor ; and at this court the freehold tenants were anciently and are still compellable to perform their suit and service, as well to inquire of and maintain the rights of the lord, as to form a jury for the trial of matters in dispute between their fellow tenants (*p*), which duty led, in the early feudal institutions, to their designation of peers of the court, *pares curiæ*.

We have also seen that suit of court by freeholders may be done by attorney, but that such attorney cannot be appointed by parol (*q*): and that joint tenants and co-parceners shall do but one suit, the eldest sister performing the suit in the latter instance, and the other joint tenants or co-heirs being contributory for the suit done for them (*r*). But if there be two co-parceners, and the eldest will not do suit, then the lord may compel the youngest to make suit, who shall have contribution against the eldest (*s*).

It has likewise been already stated that a woman, in respect of the land she holds in dower, is not allowed to sit on the homage *to try issues* in a court baron, where the suitors are the judges, nor even to make presentment, unless the husband die without an heir, but that the husband, and not the wife, is to perform all the services to the lord in respect of the wife's freehold lands (*t*).

The proper remedy for neglect of suit of court, as well as for refusal to do fealty, is by *distress infinite* of the beasts or other personal property of the party distrained upon (*u*); but the distress is considered as a pledge only for the performance of the services, and cannot be sold ; for which reason the author apprehends that it can in no case be deemed immoderate or excessive (*x*) under the statute of Marlborough (*y*).

But it should seem that for suit to a hundred court one cannot distrain, except by prescription, and in the lands charged with the suit, although a hundred court is no more than a court baron, and the suitors there are judges (*z*).

in the *Commutation and Enfranchisement* act, 4 & 5 Vict. c. 35, the word "rents" includes "services," *not being service at the lord's court*.

(*p*) See ante, pp. 601—604.

(*q*) Stat. Merton, 20 H. 3, c. 10. And see F. N. B. 156 D.; Kitch. 293; ante, pt. 1, p. 363.

(*r*) Ante, pt. 1, pp. 86, 365; 2 Inst. 116. See also Fitz. Abr. 162; 1 H. 4, 3 a; Kitch. 291.

(*s*) Fitz. Abr. 159 E.; Kitch. 291.

(*t*) Ante, pt. 1, p. 364. But see as to *copyholds*, ante, p. 614, n. (*c*). And note,

that the widow is not to be distrained for freehold land which she holds in dower, if the heir have sufficient land in the same county; F. N. B. 159 (A.), (B.); ante, pt. 1, p. 364, n. (*n*).

(*u*) F. N. B. 158 et seq.; Kitch. tit. Suit; 3 Bl. Com. 231. See reference to the late statute of limitation, post, p. 617, n. (*d*).

(*x*) Co. Lit. 68 b, n. (5). Finch. L. 285; Bevil's case, 4 Co. 8 b; 3 Bl. Com. 12, 231.

(*y*) 52 H. 3, c. 4.

(*z*) F. N. B. 161 D., n. (*a*).

And it is to be recollected that suit of court is not incident to tenure, unless it be suit service, so that if it should appear that the tenure was created subsequently to the statute of *quia emptores*, the author apprehends that the lord could not distrain for the subtraction of suit, except under a special reservation of the remedy of distress, or by prescription (a).

RENTS OF ASSIZE, &c.—HERIOTS (b).—These subjects are already treated of at some length in our consideration of the services due to the lord of the manor from his *copyhold* tenants (c), to which the author must beg to refer the reader, being anxious to avoid any unnecessary repetition in a work which he feels has much less pretensions to novelty of matter than of arrangement.

The author is induced, however, to offer an additional observation with reference to the provisions of the late act of parliament for the limitation of actions and suits relating to real property (d). By the second section it is enacted, that after the 31st of December, 1833, no person shall make an entry or distress, or bring an action to recover any land or rent, but within twenty years (e) after the right to do so accrued to the party himself, or to some person through whom he claims; and the third section enacts, that the right shall be deemed to have accrued, in cases of dispossession or discontinuance of possession of land or of receipt of rent, at the time of such dispossession or discontinuance of possession, “*or at the last time at which any such profits or rent were or was so received* (f).” But it is provided by the fifteenth section, that when the possession of the land or the receipt of the rent shall not at the time of passing the act have been adverse to the title of the claimant, then the right of entry or distress or action shall not be barred for the space of five years afterwards, although the period of twenty years thereinbefore limited shall have expired.

And the author submits that the effect of the second and third sections of the above act, taken independently of the fifteenth section,

(a) Kitch. 293, 294.

(b) See the references to the *Commutation and Enfranchisement act*, 4 & 5 Vict. c. 35, ante, p. 603, n. (c); pt. 1 pp. 315, 365, 369.

(c) Ante, pt. 1, ch. 8.

(d) 3 & 4 W. 4, c. 27. N.B.—By the first section the word “rent” is declared to extend to heriots, and all services and suits for which a distress may be made.

(e) N.B.—Quit rents payable in respect of freehold lands were, before the passing

of this act, recoverable for a period of fifty years; *Eldridge v. Knott*, Cowp. 214. And mere length of time did not raise the presumption in equity of an extinguishment; ante, pt. 1, p. 367.

(f) The 3rd section also makes a particular provision as to the time of the right first accruing in cases of a claim on death or on alienation, or of a reversionary interest, or on a forfeiture or breach of condition. Vide the act in the Appendix.

is to destroy the remedy which the law had afforded, by a distress for the recovery of quit rents (*g*), in those cases where twenty years may have elapsed since the last payment, but that under the fifteenth section the remedy is revived for a period of five years where there was not an adverse possession of the rent at the time of passing the act (*h*).

RELIEFS.—Fully according with the more general opinion that the *proper* or ancient relief is not a service, but a fruit or improvement of service (*i*), this subject might, perhaps, have been introduced with greater propriety at the end of the present chapter, in treating more generally of the *fruits of tenure*, but from the contrariety of opinion as to the true character of the *proper* relief, (induced, possibly, by the circumstance of its being recoverable by distress (*k*),) and also from the affinity which the relief bears to the exactions prevailing under the feudal system, to which some allusions have been incidentally made, the author has preferred classing the observations which it is his design to offer on the law of reliefs, with the consideration of the services usually rendered at this day for lands of freehold tenure. And another motive for this preference of classification is, that a relief is sometimes due by *reservation* or under an immemorial *custom* in a particular manor (*l*).

The relief has been supposed to have originated after the Conquest, and to have been established on the plan of the Danish heriot (*m*), upon estates in England being made hereditary; but the better opinion is, that it was a fruit of feudal tenure, and was paid as an acknowledgment for the renewal of the feud, when the succession was arbitrary and dependent on the will of the lord (*n*); and that it was

(*g*) N. B.—In copyhold cases, as between the same lord and tenant, ante, pt. 1, pp. 366, 367.

(*h*) As the 36th section has abolished all real actions, the lord is without *any* remedy for quit rents if in arrear for 20 years or upwards, (except for the 5 years under the 15th section, and the extension to 1 June, 1835, when no right of entry, by the 37th section;) and under the 34th section, the right to the rent would, after the 20 years, be extinguished. But the period of 20 years may be extended even to 40 years by the person entitled to the rent being under the disability of infancy, coverture, lunacy, or absence beyond seas. Vide ss. 16, 17, ante, pt. 1, p. 367.

(*i*) See 2 Roll. Abr. 514, 515 (D.), pl.

3 & 4; 3 Co. 66, in Pennant's case; Co. Lit. 83 a; Wright's Ten. 98, n. (k). Therefore the executors of the lord shall have an action of debt for relief; Leake's case, 32 H. 8, cited 4 Co. 49 b.

(*k*) The lord may distrain, but his executors or administrators cannot; post, p. 620.

(*l*) Post, p. 621.

Note.—“Reliefs” are included in the general term “rents” in the *Commutation and Enfranchisement* act, 4 & 5 Vict. c. 35. See the interpretation clause (s. 102).

(*m*) See the Appendix to 2d Gen. Rep. of Commissioners on Public Records, p. 451.

(*n*) *Ib.*; Wright's Ten. 15; Spel. Treat. of Feuda, 33; 2 Bl. Com. 65.

continued to be paid by the heir by way of fine for taking up the estate after feuds became hereditary (*o*).

The relief is by some ancient writers supposed to have been originally paid in horses and arms, and to have given place to a money payment upon the ordinance called the assize of arms in the twenty-seventh year of Henry the Second, by which every man's armour was directed to be preserved for his heir (*p*). But others are of opinion that the relief was originally paid in money with us as in Normandy (*q*). And certain it is that the relief has been frequently confounded with the heriot, although there is a great distinction between them, which Sir Henry Spelman thus notices:—"Heriots" (he observes) "were *militiæ apparatus*, which the word signifieth, and devised to keep the conquered nation in subjection, and to support the public strength and military furniture of the kingdom; the reliefs for the private commodity of the lord, that he might not have *inutilem proprietatem* in the seignory. The heriots were therefore paid in habiliments of war, the reliefs usually in money; the heriot for the tenant that died, and out of his goods; the relief for the tenant that succeeded, and out of his purse; the heriot whether the son or heir enjoyed the land or not; the relief by none but him only that obtained the land in succession. I stand the longer" (adds Sir Henry Spelman) "herein, for that not only the report, but even Domesday itself (*r*), and generally all the ancient monkish writers have confounded heriots and reliefs (*s*)."

It may, the author thinks, be inferred from several of our ancient text writers, that William I., and perhaps Henry I., required reliefs to be paid by military tenants in habiliments of war, on the plan of the Danish heriot, but that they were reduced to some certainty by the laws of the former, and restricted by the latter to a *just* and *lawful* relief, after having been exacted arbitrarily by William II (*t*).

(*o*) But the ancient relief, it seems, was only payable if the heir at the death of his ancestor had attained twenty-one; 2 Bl. Com. 66; Co. Cop. s. 25, Tr. 28.

(*p*) See App. to 2d Gen. Rep. of Com. on Pub. Rec. p. 451.

(*q*) Ib. n. 1; Wright's Ten. 100, n. (*o*). Vide also Hallam, 416.

(*r*) In the Appendix to 2d Gen. Rep. from the Comm. on Pub. Rec. p. 451, it is observed that the heriot occurs more rarely in the Domesday Survey than might have been expected; and that the first establishment, if not the introduction, of the compulsory heriot into England, is found in a law of King Canute; Lex Ang.

Sax. Wilk. p. 144. And see Sulliv. Feud. L. p. 281; Co. Lit. 83 a, n. (1); Hallam, 416.

(*s*) And see Co. Lit. 83 a, n. (1); Sul. Feud. L. p. 281; Bract. l. 2, c. 36, 86 a.

(*t*) See Wright's Ten. pp. 99—101. The relief of a knight's fee is thought to have been certain, even at common law, viz. 100s., Co. Lit. 76 a; but the composition for reliefs of earls and barons, though the relief itself was reduced and made less arbitrary in the reigns of William and Henry I., is generally supposed not to have been ascertained and fully established until the charters of King John and Henry III., which restored the more ancient Nor-

The relief of socage lands, to which all tenures, with the exceptions already mentioned, were reduced by the stat. 12 Car. 2, c. 24, was fixed so long back as the 40th law of William I. at a year's rent, which has been constantly taken as a relief for socage lands up to the present day (*u*); the sum now rendered as a relief having reference to the quit-rent payable in respect of the particular lands.

A relief being a fruit of service *only*, is not within the limitation of fifty years, prescribed by 32 Hen. VIII. c. 2, in the case of an avowry or conusance for suit and service (*x*).

Yet it should seem that the lord may distrain for the *proper* relief (*y*), as distinguishable from a prescriptive or *improper* relief (*z*), and cannot (as some say) have an action of debt (*a*); but that his executors or administrators may have an action of debt for the relief, as well against the tenant as against his executor, and cannot dis-

man relief in money, fixing the relief of both earls and barons *ad centum libras*; *ib.* But Lord Coke in his 2 Inst. p. 7, supposes, that the lawful and just relief mentioned in the charter of Henry I. to be paid by an earl and baron was certain, viz. the fourth part of the yearly value of his earldom or barony (i. e. an earl 100*l.*, and a baron 100 marks), and that the 2d chap. of Magna Charta was but a restitution and declaration of the ancient common law. And see Co. Lit. 83 b.

The titles of duke, marquess and viscount did not exist in England at the time of Magna Charta (9 H. 3, cap. 2); but they were considered to be comprehended under the equity of the statute, and subject to reliefs according to their dignities, viz. a duke 200*l.*, or one-fourth of the supposed yearly value of a dukedom, and a marquess 200 marks, or one-fourth of the yearly value of two baronies; Co. Cop. s. 25, Tr. 32, 33. And see Ant. Lowe's case, 9 Co. 124 b. The exact amount paid as a relief by a viscount does not appear to be known; Co. Lit. 83 b.

See further as to relief for lands held by knight-service, ante, p. 612, n. (*k*).

(*u*) Glanv. lib. 9, c. 4, f. 71 a; Fleta, lib. 3, c. 17, s. 11; Litt. s. 126, 127; 2 Inst. 232; 2 Roll. Abr. 515 (E.); Wright's Ten. 105, n. (*w*). Sir Edward Coke in his Copyholder [s. 25, Tr. 28] says, "If a tenant in socage die, his heir

above the age of fourteen, then shall the heir double the rent that his ancestor was wont to pay to the lord; as if the tenant holdeth of his lord by fealty, and 5*s.*, then shall the heir double the rent, and shall pay 10*s.*, viz. 5*s.* in the name of a relief, over and above the 5*s.* which he payeth for his rent."

(*x*) 2 Inst. 95, N. 2; Co. Lit. 83 a; Bevil's case, 4 Co. 10, 11; ante, pt. 1, p. 82, n. (*u*). Yet in avowry for relief, the avowant must allege a seizin of the services; 2 Inst. 96. N. B. The late stat. of limitation (3 & 4 Will. 4, c. 27), embraces all services, ante, p. 617, n. (*d*), but would seem not to extend to reliefs.

(*y*) But the distress could not be sold, the author apprehends, under the stat. 4 Geo. 2, c. 28; Scroggs, 98.

(*z*) i. e. a relief presumed to have been reserved by a lost deed, with a clause of distress; Gilb. Dis. 8.

(*a*) Co. Lit. 47 b, 83 b, 162 b; Gilb. Dis. 7; but see *contra* as to action of debt, Co. Cop. s. 31, Tr. 45; Hungerford v. Havyland or Harryland, W. Jones, 132; S. C. 2 Bulst. 323; S. C. Latch. 37, &c.; S. C. 2 Roll. Rep. 371; see also Dy. 24 a, ca. 149; Lord North's case, 2 Leo. 179; and Kitch. p. 86, says, "It seems the lord shall have debt for relief, and clearly the executors shall have debt for relief, 32 Hen. 8, 20; 19 Hen. 6;" ante, pt. 1, p. 368.

train (*b*): and as the relief is incident of common right to socage tenure, it is not necessary to set forth a title to it in replevin (*c*).

There is however it appears this distinction as to the mode of recovering a relief, namely, that when it is due by prescription, reservation, or by custom (*d*), the lord cannot distrain for it, unless he can show a title to the remedy as well as the payment itself, either by prescription or custom (*e*).

It has been held that acceptance of rent from the new tenant, is no bar of the relief due from the old tenant (*f*): and that a relief cannot be apportioned; so that on the death of one of several coparceners, who are but as one tenant to the lord, no relief is payable (*g*); and the author apprehends that the same rule is applicable to joint-tenants.

SECTION III.

Of Amercements.

An amercement (*h*) is in Latin called *misericordia*, because it ought to be assessed mercifully by the peers or equals of the delinquent (*i*).

It is, the author apprehends, the province of the homage of a court baron to assess every amercement, the statute of Magna Charta, (9 Hen. III.,) cap. 14, having provided that freemen (*k*) should be amerced after the manner of the fault committed, and that the amercements should be assessed *only* by the oath of honest and lawful men of the vicinage; that earls and barons should not be amerced but by their peers (*l*); and that an ecclesiastical person should not be amerced in respect of his spiritual benefice, but in respect of his lay

(*b*) See Co. Lit. as in the last note; 1 Sho. 36, in *Shuttleworth v. Garrett*; 1 Roll. Abr. 665; *Leak's case*, cited 4 Co. 496; ante, p. 618, n. (*i*); *Lord St. John v. Brandring*, Cro. Eliz. 883; S. C. Noy, 43. It was held in this case that the relief being certain, wager of law was not allowable.

(*c*) *Freeman v. Booth*, 3 Lev. 145.

(*d*) As where lands are held of A. of his manor of B. by payment of rent and a customary relief of one year's value by the heir. N. B. The sum paid as relief custom is very uncertain, and in some places is a year's, and in others half a year's profits, and is frequently payable on alienation as well as on death; Co. Cop. s. 25, Tr. 27, 28.

(*e*) *Hungerford v. Havyland*, ubi sup.; Gilb. Dis. 8.

(*f*) *Parham v. Norton*, Cro. Eliz. 886; S. C. Mo. 643; S. C. cited in *Pennant's case*, 3 Co. 66 a.

(*g*) 3 Leo. 13, ca. 30.

(*h*) *Wite* or *Wita* is an old Saxon word, also signifying amercement. So likewise the word *Bote*, and the word *Wera* or *Were*.

(*i*) Co. Lit. 126 b.

(*k*) The word "*freeman*" implies a freeholder, and extends as well to sole corporations, as bishops, &c., as to laymen, but not to corporations aggregate; 2 Inst. 27.

(*l*) Or equals [*per pares*].

tenement (*m*); and the stat. of Westm. 1, (3 Ed. I.) c. 6, having enacted that no man should be amerced without reasonable cause, and according to the quantity of his trespass, "*and that by his or their peers.*"

Yet by prescription the steward, even of a court baron, where the suitors are the judges, may assess an amercement (*n*); but then the amercement must be affeered by the peers or equals of the offender, that is, by free tenants of the manor;—and where debt was brought for an amercement, which though affeered did not appear to be so by free tenants, the action was held not to lie (*o*).

The practice of affeering amercements arose out of the above statute of Magna Charta, it being considered that the extent of a fault committed could only be known by the affeement of the peers of the offender (*p*).

But as the act of affeement is no otherwise prescribed by that statute, or by the above statute of Westm. 1, than by the constructive sense of the provisions just cited, the spirit as well as the literal meaning of those provisions would seem to be satisfied by an amercement by the homage in a *particular sum*, without any affeement (*q*).

Yet as it is by the judgment of his *peers* that every man is to be amerced, it is better, and has been thought essential (*r*), that two, at least, of the homage should be appointed affeers (*s*), even when the homage amerce in a sum certain, in order that the office of the homage and that of the affeers should not be confounded (*t*); and the affeement, it should seem, must be made at the same court (*u*).

(*m*) "Although this statute be in the negative, yet long usage hath prevailed against it, for the amercement of the nobility is reduced to a certainty, viz. a duke 10*l.*, an earl 5*l.*, a bishop, who hath a barony, 5*l.* &c. In the Mirror it is said that the amercement of an earl was 100*l.*, and of a baron an hundred marks;" 2 Inst. 28; and see Griesley's case, 8 Co. 40 a.

(*n*) Blunt v. Whitacre, 1 Leo. 242; but see Rowleston v. Alman, Cro. Eliz. 748.

(*o*) Baldwin v. Tudge, 2 Wils. 20; and see Conyers v. Franke, 3 Lev. 19.

(*p*) Br. Amerc. pl. 50, cites 10 Hen. 6, 7.

(*q*) Matthews v. Cary, 1 Sho. 62; per Holt, C. J., in Brook v. Hustler, 11 Mod. 76.

(*r*) See Gilb. Eq. Rep. 211, in Edwards v. Hughes; 2 Vin. Abr. Amercement (D.)

(*s*) Kitch. 153, who there says, "In all court barons *three* are sworn to ratify the amercements;" but this the author apprehends is a misprint, for in the same page he says, "If the steward or the bailiff will assess any amercement without confirming by *two* upon their oaths, after that the homage hath presented the offenders, there is a special writ upon the stat. of Mag. Ch. c. 14."

(*t*) Hob. 129, per Hobart.

(*u*) 3 Keb. 363, in Cutler & Creswick; Scroggs, 150.

Sworn affeers are absolutely essential in a court leet; 3 Lev. 206; Gilb. Eq. Rep. 211; post, tit. "Courts Leet, (Amercement)."

And it is the more usual, and certainly the more advisable course, for the homage of the court baron to adjudge the party to be amerced in general terms, *quod sit in misericordiâ*, and then to have the sum ascertained by affeerors (*x*).

Should the amercement be immoderate, and the lord or steward neglect to have it moderated by affeerment, the writ of *moderata misericordia* may be sued out, directed to the lord or his bailiffs, commanding them that they moderately amerce the party according to the quantity of his fault, &c., which writ is founded on the above stat. of Magna Charta, c. 14; and the process upon it is *alias* and *pluries*, and attachment, which attachment is directed to the sheriff (*y*).

When two or more are amerced for the same trespass, they cannot join in a writ *de moderata misericordiâ*, as they should be severally amerced (*z*).

And if the lord or steward amerce any tenant or party in the court baron without cause, and distrain for the amercement, trespass will lie (*a*).

Where, according to an established custom in the particular manor, a by-law is made, and a penalty laid upon every tenant guilty of a breach thereof, such penalty is in the nature of a fine set by the Court, and no affeerment can be necessary (*b*): indeed an affeerment or alteration of the penalty would be illegal (*c*). But if the fine in such a case were discretionary, then, the author apprehends, affeerment would be essential (*d*).

A court baron not being a court of record, neither the lord nor steward can fine or imprison (*e*): nor can the lord nor steward assess an amercement for a private trespass done to the lord, except perhaps by custom (*f*).

(*x*) *Brook v. Hustler*, sup.; S. C. 1 Salk. 56; *Griesley's case*, 8 Co. 40 b; but see *Hob. 129*, in *Wilton v. Hardingham*.

(*y*) F. N. B. 75; *Kitch. 153*; Co. Lit. 126 b.

(*z*) *Godfrey's case*, 11 Co. 43 a.

(*a*) F. N. B. 75, C.; *Kitch. 153*; Co. Lit. 126 b.

(*b*) *Castle v. Oldman*, 1 Leo. 203; *Davies v. Lowden*, Cart. 29; *Griesley's case*, 8 Co. 38 b; *Morgan's case*, 8 Mod. 301; but in the latter case one justice was of opinion that the custom was abrogated by Magna Charta; and see *Edwards & Hughes*, ubi sup.

(*c*) *Scarning v. Cryer*, 3 Leo. 8; S. C. Mo. 75; S. C. Bendl. 159.

(*d*) *Morgan's case*, sup.

(*e*) Co. Cop. s. 26, Tr. 34; *Griesley's case*, *Godfrey's case*, sup.; 1 Roll. Rep. 74; *Waterman v. Cropp*, Godb. 381; *Scroggs*, 5; and see *Lord Cobham v. Brown*, 1 Leo. 217; but it would seem that the Admiralty Court, which is no court of record, may fine and imprison for a contempt in court; *Sparks v. Martyn*, 1 Vent. 1.

(*f*) See *Blunt v. Whitacre*, 1 Leo. 242; *Partridge v. Walker*, P. 16 Car. 2, B. R. *Scroggs*, 147; *Kitch. p. 154*, says "The lord cannot amerce a man in his own court for trespass made to himself, by the law, but he may by custom."

The lord of a manor cannot distrain for an amercement in a court baron, as of common right (*g*), for he shall not have a double distress, and he may distrain for the service itself (*h*); but the remedy for an amercement is action of debt (*i*), in which action the defendant, prior to a late act (*k*), was allowed to wage his law (*l*).

It should seem, however, that the king by his prerogative may distrain for an amercement as of common right (*m*); and that a distress for an amercement in a court baron for non-performance of suit, may be good by prescription (*n*), but the goods of an under-tenant could not be distrained under such a prescription (*o*).

The bailiff of a manor cannot distrain *ex officio*, nor *per mandatum* of the lord, but must have a special warrant from the lord or steward (*p*), and it should seem that the precept must be set forth in the pleadings (*q*).

The bailiff is not punishable in trespass for levying damages by command of the steward, although the party plead to the jurisdiction, unless, indeed, the verdict be defeated by a writ of false judgment (*r*).

In trespass on distress for an amercement in a court baron, the defendant must plead the exact title of the court before whom it was held, that the trespass was committed *intra manerium*, and not merely that it was presented that a trespass was committed (*s*), and that the distress was made *intra jurisdictionem curiæ* (*t*).

It would seem that the amercement is lost by the death of the tenant before it is levied, as it is *quasi actio personalis* (*u*), and

(*g*) Pell or Pill v. Towers, Noy, 20; Cro. Eliz. 792; Rowletson v. Alman, ib. 748; Blunt v. Whitacre, ubi sup.; Scroggs, 145; but see Co. Cop. s. 31, Tr. 45; 1 Brownl. 36.

(*h*) Gilb. Dis. 16; Goosey v. Pot, Ow. 146; Allen v. Givers, Mo. 185; Godfrey's case, 11 Co. 45 a; Pell or Pill v. Towers, sup.; ante, pt. 1, 364.

(*i*) 12 R. 2; Statham, f. 62; Kitch. 86; ib. 145, 153, 154; Gilb. Dis. 11.

(*k*) By 3 & 4 Will. 4, c. 42, s. 13, wager of law was abolished.

(*l*) Kitch. 153; Scroggs, 137; Co. Lit. 295 a; contra in debt for fine or amercement in court leet, because the leet is a court of record; Co. Lit. 295 a; Scroggs, 137. See as to the mode of waging law, post, sect. v.

(*m*) Rowletson v. Alman, sup.

(*n*) Ib.; and see cases, ante, 623, n. (*f*); sup. n. (*g*).

(*o*) Cro. Eliz. 792.

(*p*) Rowletson v. Alman, sup.; Steverton v. Scroga, Cro. Eliz. 698.

(*q*) Lamb v. Mills, 4 Mod. 377. The bailiff should be sworn to the due discharge of the duties of his office; see Scroggs, 99; 1 Roll. Rep. 338.

(*r*) Kitch. 148.

(*s*) Armyn v. Appletoft, Cro. Jac. 582; Scarning v. Cryer, 3 Leo. 7; S. C. Mo. 75; S. C. Bendl. 160; and see Parham v. Norton, Cro. Eliz. 886; Blunt v. Whitacre, ubi sup.; but see Lukin v. Eve, Mo. 89.

(*t*) Anon. 1 Mod. 75.

(*u*) Jackman v. Hoddesdon, Cro. Eliz. 351. Being a personal default, the cattle of a stranger or lessee of the tenant could not be distrained; Pell or Pill v. Towers, ubi sup. And see 41 E. 3, 26 b, p. 23, cited Dy. 317 b, n. a; Goosey v. Pot, ubi sup.

not like the case of relief, where action lies against an executor (*v*).

SECTION IV.

Of By-Laws.

The tenants of a manor or vill, it is said, may make by-laws, touching their commons and the like, to bind themselves, but not strangers (*x*); and again it is said, that where a by-law is for the public good, as to make a causeway or bridge, it is binding on all, *ie. of the vill* though all do not agree (*y*), and even without a custom (*z*); but the author apprehends that a by-law in a Court Baron will bind such tenants only as are assenting, unless it be made under an immemorial custom, or by prescription (*a*). And even with a custom in favour of a by-law, a stranger could not be bound by it (*b*), as every custom must be reasonable in its commencement.

So where the by-law was that no tenant should put a steer on the common, being a year old or more, upon pain of sixpence for every offence, and that it should be lawful to distrain for the same, it was adjudged on demurrer in replevin that this by-law was void; for where a man hath right of common for all commonable cattle, it is against common right to restrain him from one particular sort of cattle; but if the by-law had been that none should put in his cattle before a particular day it had been good, for that would not take away, but only order the inheritance (*c*).

And where the homage, under a custom to make by-laws for the well ordering of a common, ordained that no commoner should put his sheep in a particular part of the common, under a penalty of 3s. 4d. to the lord, upon demurrer in replevin, this was adjudged to be a good law, especially since it did not take all the common, but only for sheep, *and in a particular place* (*d*).

(*v*) Co. Lit. 295 a; ante, p. 620.

(*x*) Vide Br. tit. Customs, pl. 32, cites 21 H. 7, 40; Lex Man. 42, pl. 1; Hob. 212, in Norris v. Staps.

(*y*) Vide Kitch. 89, 156, cites 44 E. 3, 19; Br. tit. Customs, pl. 6. And see 1 Mod. 194, in Rogers v. Davenant; 8 E. 1, Ass. 413, cited Kitch. 89.

(*z*) 5 Co. 63 a, in the Chamberlain of London's case. In that case a by-law for repairing a church or a highway was considered equally for the public good, and therefore binding; Scroggs, 140. But some of the books distinguish between the

two cases, and deem the latter only good; 44 E. 3, 19; Kitch. 89.

(*a*) See Kitch. 89, 156; Hob. 212; Mo. 579.

(*b*) 11 H. 7, 14; 21 H. 7, 40; Fitz. Abr. tit. Prescrip. pl. 67; Br. Abr. tit. Prescrip. 40; ib. Customs, pl. 32, 75; Kitch. 89, 156.

(*c*) Erbery v. Latton, 1 Leo. 189; S. C. 1 And. 234. One cannot prescribe to make by-laws to alter inheritances; 49 Ass. 8; Kitch. 90. And see per Manwood, 15 Eliz. Kitch. 156.

(*d*) James v. Tintney or Tutney, Cro.

And again, where the inhabitants of a particular place used to repair a bridge for the convenience of the commoners, and a by-law was made that the inhabitants should repair the bridge before a certain day under a penalty, and this not being done, the default was presented at the next court, and one of the inhabitants was distrained; on demurrer in replevin the plaintiff had judgment, because the defendant had set forth *that the steward made this by-law with the consent of the homage*, whereas all by-laws are to be made by the homage (e).

When a by-law is made by custom, the breach of it need not be presented by the homage, nor is it necessary in replevin to aver the necessity of a by-law (f). And notice of it is unnecessary, it being proclaimed in court, where every tenant is bound to attend (g).

And when a penalty is inflicted for a breach of a by-law, for which the law distrains, and does not say whose cattle they were, yet it is said they shall be intended to be the cattle of the offender (h).

The penalty for a breach of a by-law made at a Court Baron is in the nature of a fine rather than an amercement, and is not affeerable (i).

In the case of *Scarning v. Cryer* (k), under a custom to make by-laws, and to set penalties on those who offended against them, and distrain for the same, a by-law was made, and at another court the defendant was presented for a breach of it, by which the penalty (which was 20s.) was forfeited, but *ex gr. cur'*. the penalty was affeered at 6s. 8d.; and upon a demurrer to the conuzance it was adjudged ill, not only because a pain of a certain sum, as this was, could not be altered, but also because the defendant pleaded that the presentment was made *coram sectatoribus*, without showing their names (l).

Where the custom of the manor authorising the homage to make by-laws, and assess penalties on breach thereof, should be silent as to the remedy, and there should be no prescription for a distress, the penalty could only be recovered by action of debt by the lord, supposing the penalty given to him by the custom, and it would seem

Car. 497; S. C. W. Jones, 430; S. C. Win. 30. And see the argument of the Ch. J. in S. C. Mar. 28.

(e) *Wells v. Cottrell*, 3 Lev. 48; vide the pleadings in this case, Lex Man. App. p. 31, pl. 11. But see the report of James & Tintney, in Mar. 28; and Lord Exeter's case, Scroggs, 140.

(f) Lord Cromwell's case, 3 Leo. 38; S. C. Dy. 323; Lex Man. 42. And such

by-laws bind the tenants as well freeholders as copyholders; Anon. (but qu. S. C.) Godb. 50.

(g) *James v. Tintney*, sup.

(h) Lex Man. 42, pl. 2.

(i) Ante, p. 623.

(k) 3 Leo. 7; S. C. Bendl. 159; S. C. (*Scarling v. Criett*), Mo. 75.

(l) Vide also *Garrett v. Higby*, T. Jones, 129.

that the defendant might have waged his law in this action, as well as in an action of debt for an amercement in Court Baron (*m*).

SECTION V.

Of Plaints in nature of Personal Actions.

All pleas in a Court Baron of common right, and of a personal nature were, prior to the abovementioned act of parliament, determinable by wager of law (*n*); yet by prescription they could only be determined by a jury, and the trial might always have been by jury, with the consent of the parties (*o*).

But unless warranted by charter or prescription the lord cannot compel the suitors of the Court Baron to be sworn, as between party and party (*p*); though in a writ of right patent, wherein a plea was held of freehold, as the writ was *mandatum regis*, an oath might have been administered (*q*). So that it must frequently happen that for want of evidence of a charter or prescription, pleas of debt, even under 40s., cannot be tried in the Court Baron.

The process on plaint in a Court Baron is summons, and distress infinite, till the defendant appears (*r*), but the court has not power to

(*m*) *Tyndal v. Toller or Tucker*, Bendl. 140; S. C. cited Mo. 277; 1 Leo. 204. Wager of law was abolished by 3 & 4 W. 4, c. 42; ante, p. 624, n. (*k*).

(*n*) 2 Inst. 143; Kitch. 225, 384. In waging his law the defendant was to bring with him eleven persons, of his neighbours, that would avow upon their oath that in their consciences he said the truth; Scroggs, 136; Co. Lit. 295 a. But it would seem to be doubtful whether six or eleven were necessary; 2 Vent. 171; 2 Bl. Com. 343. In the case of the *King v. Williams*, 2 Barn. & Cress. 538, the court refused to assign compurgators. But see 1 N. R. 297, in *Barry v. Robinson*.

(*o*) 33 H. 8, 143; Kitch. 225, 384.

(*p*) 2 Inst. 142; Br. Court Baron, pl. 2, 23; and see Kitch. 82. But to inquire for the lord of the articles belonging to the Court Baron, or hundred, they may be sworn; 2 Inst. 142. N. B. The stat. of Westm. 2, c. 36, subjecting lords and stewards of courts procuring suits to be instituted, to a fine to the King, and to treble damages to the party grieved, (and who at common law could only recover

single damages,) extends to Courts Baron and Courts Leet; 2 Inst. 444. Vide reference in the Appendix to 1 [2] Jac. 1, c. 5, and stat. Westm. 1, c. 33.

(*q*) By stat. of Marl. 52 H. 3, c. 22, none may distrain his freeholders to answer for their freeholds, nor for any things touching their freehold, without the king's writ; nor shall cause his freeholders to swear against their wills, for no man may do that without the king's commandment. And this act was confirmed and enlarged by 15 R. 2, c. 12; 16 R. 2, c. 2; vide Bract. lib. 3, fo. 106; Kitch. 225, 384; 2 Inst. 142, 143; 2 Bac. Abr. 206.

(*r*) In *Tubervill v. Tipper*, 2 Roll. Rep. 493, it was agreed that process in Court Baron was summons, *attachment*, and distress infinite; and see 38 E. 3, 3; 1 E. 4, 10, cited Br. Court Baron, pl. 5, 10; Bulst. 53; vide also 34 H. 6, 53, and 37 H. 6, 53, cited Kitch. 152; Scroggs, 84; Lex Man. 58. But N. B. the attachment in the above case of *Tubervill & Tipper* appears to have been awarded *secundum consuetudinem curiæ*; vide post.

make execution as in the superior courts (*s*); and the distress in a Court Baron, even of goods taken upon a judgment, is only in nature of a pledge, and cannot be sold, except by special custom (*t*): neither are the goods forfeited to the lord, even if the manor belong to the king (*u*).

Yet by special custom a *levari facias* may be awarded in a Court Baron, and the goods sold; but in any proceedings consequent on the execution the custom must be pleaded (*x*).

Should a debt be divided in a Court Baron, so as to reduce each plaintiff below 40*s.*, the defendant may have a *supersedeas*; and of this the defendant might formerly have waged his law (*y*).

The want of summons in a plea of debt in an inferior court renders all the proceedings illegal (*z*): but where, in trespass, the defendant pleaded that an attachment was awarded on non-appearance, *secundum consuetudinem curiæ*, and the plea was demurred to for irregularity, a summons being the first process, and not an attachment, it was adjudged that the attachment should be intended to be *after the summons* (*a*).

The Court Baron not being a court of record, a *capias* cannot be awarded by it, except indeed by charter or prescription (*b*); and for the same reason a writ of error does not lie on a judgment in the Court Baron, but the party may have a writ of false judgment (*c*).

The proceedings in the Court Baron, as in all other inferior courts, are traversable, and should therefore be set forth at length in the pleadings (*d*); but in replevin in Court Baron the plaintiff cannot be removed, either by plaintiff or defendant, by *pone* or *recordari*, without cause shown in the writ (*e*).

(*s*) 4 H. 6, 17; Br. Court Baron, pl. 6, 7; ib. Execution, pl. 80, cites 22 Ass. 72; Fitz. Execution, pl. 110. But in *Doe & Parmiter*, B. R. Hill. 24 Car. 2, it was said per Cur. that the constant course in all courts was *levari facias*, which was meant in the old books by a *distringas*; see Scroggs, 93.

(*t*) Vide Br. Abr. as in n. (*s*), sup.; Trye v. Burgh, Noy, 17; Pell v. Towers, ib. 20; Hewet v. Norberow, Bulst. 52.

(*u*) *Gomersall v. Medgate*, Yelv. 194; S. C. (*Gomersale v. Ways*) Cro. Eliz. 255; Lex Man. 58, 59; and see Hewet v. Norberow, sup.

(*x*) See the authorities, sup. n. (*s*) and (*t*). Sometimes, by custom, a *venditioni exponas* is awarded, after the third attachment, for sale of goods distrained on non-

appearance; Scroggs, 203.

(*y*) F. N. B. 239 H.; Br. Court Baron, pl. 20; ante, pp. 624, n. (*k*), 627, n. (*m*).

(*z*) 1 Str. 147.

(*a*) *Tubervill v. Tipper*, ubi sup.

(*b*) Kitch. 146, 147; ante, p. 601, n. (*k*).

(*c*) Scroggs, 84, 93; Kitch. 187; Co. Lit. 117 b; Atwood's case, Lex Man. App. pl. 17; Bassett v. Harris, ib. pl. 18; and see Br. Court Baron, pl. 21.

(*d*) *Garret v. Higby*, T. Jones, 129; *Scarling v. Criett*, or *Scarning v. Cryer*, Mo. 73; S. C. 3 Leo. 7; S. C. Bendl. 159; Lex Man. 57.

(*e*) F. N. B. 70 A. B.; Gilb. Dis. 105. If after the removal of the plaintiff the party be distrained again for the same cause, he shall have the writ of recaption; F. N. B.

A regular interlocutory judgment may be set aside by the judge of every inferior court, in order to let in a trial of the merits (*f*); but he cannot grant a new trial, or set aside a verdict, except for irregularity, fraud or surprise (*g*).

SECTION VI.

Of the Writ of Right Patent (h).

A writ of right patent, properly so called (*i*), was a writ brought by him who had the full and mere right of property in the *fee simple* of the land, to recover the right of possession, to which he could not have been restored without a judgment first had for him in the king's court, or *some Court Baron* (*k*).

The writ of right patent, like all other original writs in real actions, was sued out of the High Court of Chancery, and was directed to the lord of the manor, of whom the land was holden, commanding him to do right to the demandant in his court; but if the lord was not in England, the writ was directed to his bailiff (*l*); and then the Chancellor of England was to be certified thereof (*m*).

The original thus sued forth was to be brought to the steward of the manor, of which the land was holden, at some Court Baron, who after pledges to prosecute were given, and after entering the demand made by the writ, was to deliver the writ again to the demandant, with whom it was to remain, and which was not the case as to any other writ (*n*).

73 C. See as to the removal of complaints in Courts Baron, post, p. 630, n. (*t*).

(*f*) *Rex v. Peter*, 1 Burr. 568.

(*g*) *Bailey v. Bourne*, 1 Str. 392; *Blacquiére v. Hawkins*, Dougl. 379; *Jewell v. Hill*, 1 Str. 499; *Rex v. Urling*, Fortesc. 198.

See further as to proceedings in complaints of debt, &c. in Court Baron, post, Append. to 2nd and 3rd parts.

(*h*) Vide ante, pt. 1, p. 473, n. (*a*), referring to the act of 3 & 4 Will. 4, c. 27, abolishing real actions and complaints in nature thereof, with some exceptions; and see the act in the Appendix, and the references to it, ante, pp. 566, n., 585, n.

(*i*) Writs of right were of several sorts, as the *Writ of right patent*, (of which we are now speaking:) *Writ of right close* of lands in ancient demesne, (already fully treated of, ante, tit. "Ancient Demesne:")

Writ of right of London, (concerning lands in London, and directed to the mayor and sheriffs,) F. N. B. 6 A.; *Booth's Real Actions*, 117; and *Writs of right de rationabili parte and of advowson*, Booth, 119, 121; F. N. B. 9, 30 B. All other writs of right, as the *Writ of dower unde nihil habet*, the *Writs of escheat, formedon, de rationabilibus divisis, quo jure*, &c. were writs of right in their nature only; Booth, 125.

(*k*) Bract. l. 5, c. 1, &c.; Booth, 85.

(*l*) Booth, 90; F. N. B. 1 H.; Com. Dig. Droit (B. 3.) Where the king was lord, the writ was directed to the bailiff; *Capell v. Church*, Mo. 1.

(*m*) F. N. B. 1 F. There must have been fifteen days at the least between the *teste* and the return of the writ; Booth, 1, 92.

(*n*) Booth, 90.

If the lord refused to hold his court, there should have been a writ to him to do it; and upon that an alias, pluries and attachment (*o*).

But where the lord remitted his court to the king (*p*), or had no court (*q*), then the writ was directed to the sheriff (*r*); and though it was formerly the practice to commence this action in the Court Baron, and to remove it afterwards into the County Court, by writ of *tolt* (*s*), and from thence into the Common Pleas by writ of *pone* (*t*), yet, without all this circuitry, the demandant might have had his writ of right, immediately returnable into the Common Pleas, which was most safe and usual (*u*); but the writ must have stated that the lord of the fee had remitted his court, and it was not then material whether he gave licence or not; for if this was omitted, it would have been sufficient if the lord sent his licence to the king in Chancery afterwards (*x*).

The author has shown in treating of customary plaints in nature of real actions (*y*), that the grand writ of right must have been brought by the statute of limitations of 32 Hen. VIII. (*z*), within sixty years after the title had accrued, if the action was upon the seizin of the ancestor, and within thirty years if brought upon the demandant's own seizin, and has adverted also to the general principles governing the pleadings in a real suit (*a*), to which he would add, that in a real action the tenant was obliged to begin (*b*), for he

(*o*) F. N. B. 3 E.; Com. Dig. Droit (B. 3).

(*p*) See form of licence from the lord, Rast. 246 a; F. N. B. 3 A.

(*q*) But we read, that if the lord had no court for the poorness of his manor, the writ should have been directed to the lord paramount; F. N. B. 2 A.; Com. Dig. Droit (B. 3).

(*r*) Sir Ed. Coke, [4 Inst. 271,] in treating of the jurisdiction of the coroner, says, "besides his judicial place, he hath also authority ministerial, as a sheriff, &c., viz. where there is just exception taken to the sheriff, judicial process shall be awarded to the coroner for the execution of the king's writs, in which cases he is *locum tenens vicecomitis*, and in some special cases the king's original writ shall be immediately directed unto him."

(*s*) See the form of a writ of *tolt*, 3 Bl. Com. App. No. 1, s. 2; in *Rex v.*

Morgan, 1 Sir W. Bl. 399, *Wilmot, J.*, said "The writ (of *tolt*) ought to have been directed to the suitors of the court, and not to the steward, who is only the prothonotary of the court."

(*t*) Booth, 86, n. See the form of the writ of *pone*, 3 Bl. Com. App. No. 1, s. 3.

(*u*) Booth, 91.

(*x*) F. N. B. 2 F., 3 A.; Booth, 91.

(*y*) Ante, pt. 1, p. 490.

(*z*) C. 2.

(*a*) Ante, pt. 1, p. 486. To the cases there cited, showing that the demandant was not allowed to amend the proceedings in a writ of right, add *Hull v. Blake*, 4 Taunt. 572; *Adams*, demandant, *Radway*, tenant, 1 Marsh. 602.

(*b*) Co. Ent. 182; *Hughes Abr.* 86; *Gilb. Ev.* 146; *Heydon v. Ibgrave*, 3 Leo. 162; *S. C. Gouldsb.* 23; *Dowland & Slade*, 5 East, 288; *Worley v. Blunt*, 9 Bing. 635; *Spiers v. Morris*, ib. 687.

affirmed that he had more right than the demandant; but it was some compensation to the tenant for thus exposing his title to his opponent, that the demandant was bound to show his pedigree on the face of the count (c).

And the author would further observe, that in such actions the estate sought to be recovered should have been described with great precision, to enable the sheriff to deliver seizin thereof to the demandant (d); and further that the rule of pleading was, that every *precipe quod reddat* must have expressed the vill in which the land lay, and not the hamlet only (e), but every parish was considered, *prima facie*, to be a vill, so that the contrary must have been shown (f).

SECTION VII.

Of the Fruits of Tenure; and Seigniorial Franchises.

ESCHEAT (g).—The word *escheat* is a feudal term importing a return of tenure (h), and there can be no escheat, the author apprehends, but *per defectum sanguinis* (i), that is, for default of heirs, or more correctly speaking, *pro defectu tenentis* (h); but lands may revert to the lord *per delictum tenentis*, that is, for felony (l); but this is rather a forfeiture than an escheat (m); and extends to lands pur-

(c) Per Alderson, J., in *Worley & Hunt*, *ubi sup.*; ante, pt. 1, p. 487.

(d) Ante, pt. 1, p. 488.

(e) 9 E. 4, 36; 8 E. 4, 6; 34 Hen. 6, 18; Booth, 3. But in dower it may be in an hamlet, as no certain land is demanded.

(f) 8 East, 176; and see Booth, 3, n. (e.)

See the form of *precipe*, *warrant*, *summons* and *sheriff's return* in writ of *dower*, 2 *Seand.* by Serj. Williams, 43, n. (1).

(g) This royalty is specified in the 82nd clause of the 4 & 5 Vict. c. 35, among the manorial rights excluded from the operation of the act, unless expressly commuted.

(h) It is said that a *foundership* cannot escheat, nor be forfeited, being annexed to the blood; Br. *Eschete*, pl. 9; *ib.* *Corodies*, pl. 5, cites 24 E. 3, 33, 72; but again it has been said that a *foundership* may come to the king by escheat; Br. *Peticion*, pl. 26, cites 5 E. 4, 118.

(i) Sir G. Sands' case, Hardr. 494; S. C. 2 *Freem.* 129; 1 *Sid.* 403; Jenk. 203, pl. 27; but see Co. Lit. 13 a; *Burgess v. Wheate*, 1 Sir W. Bl. 133, &c., 141, &c.; ante, pt. 1, pp. 407, 408.

(k) Hardr. 494, 495; 1 *Eden*, 201.

(l) Attainders that give escheat to the lord must be by judgment of death given in some court of record against the felon, found guilty, by verdict or confession, of the felony, or it must be by outlawry of him; Bacon's *Use of the Law*, 38; 10 *Vin.* 143, (A. 2.) pl. 3. N. B. by the 54 Geo. 3, c. 145, corruption of blood is taken away, except for the crime of treason, or of murder, or of abetting the same; ante, pt. 1, 440.

(m) The stat 25 Ed. 3, c. 2, makes this distinction between escheats and forfeitures, declaring that in the cases of *high treason* the forfeiture of escheats pertaineth to the king, as well of the lands and tenements holden of others as of himself; and that in cases of *petit treason*, the es-

chased by or descending to the party after committing the felony (*s*).

And in the case of high treason, the forfeiture of freehold land is to the king by the common law, of whomsoever the land be holden (*t*), and not to the lord (*u*), who is considered to be deprived of his seignior, as a punishment for his failing in that caution that was due to the public in the choice of his tenant (*x*); though of petit treason the forfeiture is to the lord (*y*); but even where the tenant, that is to say a tenant in fee simple, is guilty of felony only (*z*), the king is entitled to the land for a year and a day (*a*), to the prejudice of the lord (*b*).

But if the heir in fee simple commit treason in the lifetime of his father, the lord shall have the land by escheat, and not the king by forfeiture, as the son never was seized (*c*).

cheats ought to pertain to every lord of his own fee. See Sir Martin Wright's Treat. of Ten. p. 117, (n. x,) who adds, "So that in the clause relating to forfeitures for *high treason*, escheats and forfeitures are plainly distinguished; inasmuch as *escheats* themselves are for such treasons declared to be forfeited. And the Lord Coke, (2 Inst. 64,) observes this difference between them, saying, that where a lord is attainted of high treason, there the king hath the land by *forfeiture*, of whomsoever the land is held, and not in respect of any *escheat*, by reason of any *seignior*; vide Bro. tit. Eschete; Mo. 160. Upon this difference we may easily account for *gavelkind* lands being forfeitable for *treason*, though they do not *escheat* for *felony*; for though the lord may connive at or dispense with all the causes of escheat, (potest dominus feloniam remittere, Zasius in usus Feud. cap. 10, fol. 95,) or might remit the *escheat* itself as a perquisite of tenure; yet he could not dispense with the public laws of *forfeiture*, or with offences against any other person than himself." And see further as to the distinction between *escheat* and *forfeiture*, Sir W. Bl. pp. 143, 144, 145, &c., in Burgess & Wheate.

(*g*) Br. Eschete, pl. 3, cites 48 E. 3, 2; Finch, 71 b.

(*t*) Sup. n. (*l*); Br. Eschete, pl. 14,

cites 22 Ass. 49; Co. Lit. 13 a, cites Nicholl's case, Plow. Com.; and see Consider. on the Law of Forfeit. for High Treason, 4th ed., p. 60, 65; Hale, H. P. C. v. 1, c. 23.

(*u*) This, since the stat. 33 Hen. 8, c. 20, applies to lands held in fee tail as well as fee simple; and the forfeiture is before office found; Dowtie's case, 3 Co. 11 a. And the estate of a trustee was forfeited by attainder, as the king could not have been a trustee, Jenk. 190, pl. 2; but in such cases it was usual for the crown to re-grant the estate, *ex. gr.* to the *cestuy que trust*; Mo. 196; Vin. Abr. Uses, (C.); Co. Lit. 13 a, n. 7.

(*x*) Wright's Ten. 119; Consider. on the Law of Forfeit. for High Treason, 61.

(*y*) Supra, n. (*m*).

(*z*) By which is to be understood felony punishable by death; 2 Inst. 38.

(*a*) "Where tenant in tail or tenant for life is attainted, then the king shall have the profits of the lands during the life of tenant in tail, or of the tenant for life;" 2 Inst. 37.

(*b*) Magna Charta, c. 22; 17 Ed. 2, c. 16; Standf. Pleas of the Crown, lib. 3, c. 30; Br. Corone, pl. 208; and see 2 Inst. 36, citing Glanv. Bract. Brit. Flet. and the Mirror.

(*c*) Br. Eschete, pl. 6, cites 11 H. 4, 10, 11; Co. Lit. 13 a.

And lands vested in the lord by attainder of felony are not divested by a subsequent act of high treason (*d*).

If a tenant be outlawed of felony, and the lord enter by escheat (or forfeiture), the tenant, on reversing the outlawry, may re-enter, but not without a *scire facias* against the lord, as he is in by title (*e*).

And if after outlawry of the principal on felony the accessory is convicted and executed, and the lord enter on the lands of the accessory for an escheat, and afterwards the principal reverses the outlawry and pleads to the felony and is acquitted, the heirs of the accessory shall re-enter on the lord (*f*).

If a person be outlawed on an *indictment* (*g*) for felony, a conveyance pending the process, and before outlawry, will not defeat the lord of his escheat, but a feoffee might traverse the time of the feoffment or the felony itself (*h*).

When a man having an estate in freehold lands for his own life or the life of another commits treason or felony, it is said that the whole estate is forfeited to the crown, and that there is no escheat to the lord (*i*).

A remainder or reversion in fee is capable of seizin, and may escheat as well as an absolute fee (*k*), and on the death of the tenant for life, if a stranger abated, the lord might have had a writ of intrusion (*l*). But as the lord by escheat was in by title and not by way of estate, he shall not have the benefit of a warranty made to the tenant, nor take advantage of a voucher or condition (*m*).

That which does not lie in tenure, as a rent charge, advowson, common or the like, cannot escheat (*n*); but if the grantee die without

(*d*) 3 Inst. 213.

(*e*) Br. *scire facias*, pl. 109, cites 8 H. 6, 2.

(*f*) 9 Co. 119 b, in Lord Sanchar's case; 3 Inst. 231.

(*g*) *Contrà*, on *Appeal*, as the writ does not contain the time when the felony was committed; Co. Lit. 13 a & b.

(*h*) 3 Inst. 230, cites 49 E. 3, 11; 7 E. 4, 1, 2; Co. Lit. 13 a, b: but on attainder upon *verdict* a feoffee could only traverse the time; 3 Inst. 231.

(*i*) Bacon's Use of the Law, p. 40. But copyholds, whether held in fee simple or for life, are forfeited to the lord; and if intailed, the forfeiture is to the lord during the life of the offender, *ib.* And see ante, pt. 1, pp. 439, n. (*f*), 540.

(*k*) Br. Prerog. pl. 25, cites 15 H. 4,

11; Dy. 137, pl. 26, cites 3 H. 6. And the lord by escheat would be intitled to distrain for the rent reserved by a lease for life, but could not enter by force of condition broken; Co. Lit. s. 348.

(*l*) Br. Eschete, pl. 6, cites 11 H. 4, 10, 11; *ib.* Intrusion, pl. 4, cites 45 E. 3, 3: but it seems he might have had the writ of escheat instead of intrusion, if he pleased, Br. Intrusion, pl. 7; *ib.* Eschete, pl. 4, 6. Yet see 6 H. 7, 9; Br. Eschete, pl. 16, 22.

(*m*) Bulst. 164; 2 And. 148; sup. n. (*c*).

(*n*) Br. Eschete, pl. 22, cites 13 E. 3; *ib.* pl. 7, cites 11 E. 4, 82; *ib.* pl. 9, cites 24 E. 3, 72; *ib.* Intrusion, pl. 8; *ib.* Corodies, &c., pl. 5; *ib.* Prerog. pl. 1.

heir, or should the grant be to a corporation, and the corporation be dissolved, the rent, advowson, &c. would be extinct (e). Yet a rent charge, advowson, common or other thing which is not held, will be forfeited by attainder of treason or felony (p).

And on attainder of felony the lord shall have the title deeds, though they are said not to be forfeited by such attainder (q).

It should seem that a trust of freeholds is forfeitable for high treason since the statutes of 27 H. 8, c. 10, and 33 H. 8, c. 20 (r), but not for felony (s). Nor is the trust of a term attendant on the inheritance forfeitable for felony (t). The lord, however, is intitled to a term attendant on an escheated inheritance (u).

A right of action cannot escheat (x), but a right of entry may, that is, the lord, the author conceives, may enter by virtue of the right, but could not have had a writ of escheat (y).

If a trustee of freehold land died without an heir, the lord was intitled at law by escheat (s), and according to the more general opi-

(e) Br. Extinguishment, pl. 2, cites 27 H. 8, 10; ib. Prerogative, pl. 1, cites S. C. Co. Lit. 13b; Dean and Canons of Windsor v. Webb, Godb. 211; 3 Inst. 21. And a sole corporation is equally within the rule. There are authorities, however, against a donor, and favourable to the lord by escheat, Johnson v. Norway, Winch, 57; S. C. (Johnson v. Morris), Mich. 26 Jac. C. B. Hal. MSS., cites 21 E. 4, 1; 21 H. 7, 9; Southwell v. Wade, Poph. 91; S. C. 1 Roll. Abr. 816 A. Vide also n. 2, Co. Lit. 13b.

(p) Br. Eschete, pl. 9, cites 24 E. 3, 72; ib. Corodies, pl. 5, cites S. C. and 24 E. 3, 33.

(q) Br. Chart. de Terre, pl. 59.

(r) 1 Hal. H. P. C. 248; Att. Gen. v. Sands, 3 Ch. Rep. 34; S. C. Nels. Ch. Rep. 131; S. C. Hardr. 495. But it was not forfeitable at common law; Ford & Sheldon's case, 12 Co. 2; Marquis of Winchester's case, 3 Co. 3 a.

(s) Att. Gen. v. Sands, sup.

(t) Ib. But a chattel real not attendant on the inheritance is forfeitable to the king for felony by his prerogative; Rex v. Executors of Sir John Dacombe, Cro. Jac. 513; Att. Gen. v. Sands, sup.

(u) Thruxton v. Att. Gen. 1 Vern. 340.

(x) Br. Eschete, pl. 26; argo. Godb. 310; Marquis of Winchester's case, 3 Co. 2 b. And see 10 Co. 48 a.

(y) 6 H. 7, 9; Br. Eschete, pl. 16; ib. pl. 26, cites 32 H. 6, 27; Godb. 309, argo. A right of entry is forfeited to the king by attainder of high treason, but a right of action is not forfeited for treason either at common law or by the stat. 33 H. 8. Considerations on the law of forfeiture for high treason, p. 82. And see Dowtie's case, 3 Co. 10 b. Vide also reference to 3 & 4 W. 4, c. 27, abolishing the writ of escheat, &c., ante, p. 629, n. (A); post, p. 637, n. (u).

(z) Jenk. 190, ca. 92; ib. 245, ca. 30; Eales v. England, Ch. Pr. 200, 202; Burgess v. Wheate, 1 Sir W. Bl. 141. See this case, Eden's Ca. Ch. 177.

N.B.—By the 4 & 5 W. 4, c. 23, lands no longer escheat or become forfeited by reason of the death of a trustee or mortgagee without an heir; but the Court of Chancery may appoint a person to convey, in like manner as under the provisions of 11 Geo. 4 & 1 Will. 4, c. 60; nor are lands forfeited by reason of the attainder of a trustee or mortgagee. See the act in the Appendix; and see ante, pt. 1, pp. 84, n., 407, n., 447, 528, n.

nion, without being subject to the trust in equity (a). If, however, a *cestuy que trust* of freehold land die without an heir or is attainted of felony, there is no escheat or forfeiture, for a *use* was not forfeited for treason or felony at common law, but the trustee shall hold the land discharged of the trust (b).

But in copyhold cases, where the lord is privy to the creation of the trust, a very powerful argument suggests itself for the interposition of equity in favour of the *cestuy que trust* in the former instance, and of the lord in the latter (c).

A devise by a person who afterwards dies without an heir will prevent an escheat (d); and a power given to executors to sell the land will bind it in the hands of the king by escheat (e).

But the lord may enter for an escheat upon the death of a disseisee.

(a) *Burgess v. Wheate*, ubi sup.; 1 Harg. Juris. Exer. 390. And see *Jenk.* 190, ca. 92, where it is stated that the king or lord by escheat cannot be seized to any use or trust, for they are in the post and paramount the confidence; ib. 245, ca. 30; ante, p. 632, n. (u). But there is now no distinction between those in the *per* and *post* as to relief in equity, except in the case of dower, founded not upon reason but practice; 1 Sir W. Bl. 155, 162. Vide also *Nels. Ch. Rep.* 107, in *Stephens v. Bailly*. But see contra, *Eales v. England*, ubi sup. Vide also *Cart.* 67. And it has been held that a mortgagor may redeem after a forfeiture by one claiming under the mortgagee; *Pawlett v. Att. Gen.*, Hardr. 469.

See an extract in the Appendix from the stat. 39 & 40 Geo. 3, c. 88, authorizing the king to direct the execution of any trust of lands which escheat, and to make grants of escheated lands for the purpose of restoring the same to the family of the person whose estate the same had been; which act recites that lands, &c. might become vested in the crown by escheat, which in the hands of a subject, would be chargeable with certain trusts.

(b) See *Jenk.* as in notes (x) and (a) sup.; *Sir G. Sand's case*, Hardr. 494; *S. C.* 1 Sid. 403; *S. C.* 2 Freem. 129; *S. C.* *Nels. Ch. Rep.* 131; *S. C.* 3 Ch. R. 33; *Br. Feoffments to Uses*, pl. 34, cites 5 E. 4, 7;

Cary, 14, 15; *Marquis of Winchester's case*, ubi sup.; 1 Hargr. Juris. Exer. p. 387, &c. And see 1 Sir W. Bl. 184, in *Burgess & Wheate*, as to an equity of redemption. Vide also *Middleton v. Spicer*, 1 Bro. C. C. 202, 203; and *Mr. Hargrave's note* thereon in 1 Juris. Exer. p. 393.

As to forfeiture for high treason by *cestuy que trust* of freeholds since 33 H. 8, see ante, p. 634.

(c) But see 3 Ves. jun. 752; 1 Stra. 454. Vide as to an equitable escheat of copyholds, ante, pt. 1, p. 406 et seq. And see the recent case of *Weaver v. Maule*, 2 Russ. & Myl. 97.

(d) 1 Roll. Rep. 214, cites 48 E. 3, 3. And an escheat is prevented even by the title of a moiety of an heir; 2 P. W. 614, in *Eastwood & Vinke*.

Where a testator died without an heir and without any next of kin, the M. R. decided that the king, by his prerogative, was intitled to a sum charged by the testator on his estate for the benefit of a charity; *Henchman v. Attorney-General*, 2 Sim. & Stu. 498. But on an appeal to the Lord Chancellor, it was held that the legacy was to be considered as real estate undisposed of, and that the devisee, and not the crown, was intitled to it; 3 Myl. & Keen, 485; ante, pt. 1, pp. 201, 408.

(e) *Manning v. Andrews*, 1 Leo. 260. And see 10 Mod. 361, 362, citing 49 E. 3, 16.

without heir (*f*), unless the disseisor should have aliened by feoffment, for then the lord would have a tenant by title (*g*): it follows that a disseisee may enter on the lord by escheat, unless there has been a descent of the land either from the lord or from the disseisor (*h*); and the law is the same upon an ordinary alienation by a disseisor, and the death of the alienee without issue (*i*).

The lord after recovery by writ of escheat could not have avoided a term of years created by a tenant who, subsequently to the lease, died without an heir or was attainted of felony, but would take charge with the term (*k*).

And any avoidable estate, as a feoffment by an infant or person *non compos mentis*, shall bind the lord by escheat (*l*). So also a lease by husband seized in right of his wife made without the concurrence of the wife (*m*). So again as to an alienation by the husband by fine, where the wife afterwards died without an heir (*n*).

And the author apprehends that an escheat of freehold lands will not alter the course of descent where the law takes notice of a peculiar custom, as in gavelkind and borough english tenure (*o*), even if the

(*f*) Br. Ent. Cong. pl. 63, cites 27 Ass. 32.

(*g*) Co. Lit. 268 b. [Or granted and rendered the land by fine, Fitz. Ent. Cong. pl. 38; but this, the author apprehends, presupposed a bar by non-claim.]

(*h*) Br. Ent. Cong. pl. 92. And see 10 Mod. 362, argo. And if the lord would plead a release made by the disseisee to the disseisor, he must show it; 10 Co. 93, in Dr. Leyfield's case.

(*i*) Co. Lit. 240 a.

(*k*) Per Coke, 8 Co. 45, in Whittingham's case; Br. Extinguishment, pl. 23, cites 3 Ass. 1; ib. Prerog. pl. 120, cites 11 H. 6, 7; Needham & Poole, Dy. 115 b, marg.

On the death without heirs of a tenant holding lands of a manor by free and common socage, but which lands were subject to a mortgage term, the equity of redemption passes to the lord by way of escheat, and he may redeem the mortgage; Viscount Downe v. Morris, 3 Hare, 394.

Where the tenant of lands holden of a manor dies without heirs, and without having charged the lands with his debts, they are assets for the payment of such debts as against the lord claiming by es-

cheat; Evans v. Brown, 5 Beav. 114.

(*l*) 7 Co. 7 b, in the Earl of Bedford's case; 1 Roll. Rep. 402; 8 Co. 42 b, 44 a, in Whittingham's case, (sup.); 4 Co. 125, in Beverley's case. But if an infant make livery by attorney the feoffment is not voidable, but *ipso facto* void; Beverley's case and Whittingham's case, sup.

(*m*) Per Coke, C. J., 1 Roll. Rep. 402.

(*n*) Per Hobart, Ch. J., Hob. 261. But it should seem that the lord is not bound by every estoppel, for if a person were to take a lease by indenture of his own lands, though binding upon him, the lord would not be bound by it in case of an escheat; 1 Leo. 158, ca. 224.

(*o*) Custum. of Kent, cited Rob. Gav. by Wils. 85; Somn. 144, 149; 14 H. 4, 9 b; 11 H. 7, 25 b; Br. Custom, 19; Extinguishment, 14, cites 14 H. 4, 2, 3. But see *contra* per Windham, J., 1 Keb. 505; Gouldsb. 106; Lamb. 594, Dub.

N. B.—Escheat is not a title by descent:—strictly speaking, indeed, it is a title neither by purchase nor descent, Co. Lit. 186, n. 2; Lord Coke calls it a casual profit, Co. Lit. 92 b; Bracton, l. 2, f. 23, considers it as a species of reversion.

escheat were to the king, and the lands were afterwards re-granted by him, reserving other services (*p*).

The reader is here reminded, that though gavelkind lands are forfeited for high treason, yet they do not escheat for felony, nor is the king intitled to a year and day waste (*q*): but this is only where the party submits to the judgment of the law, and does not hold in the case of outlawry for felony (*r*).

If an alien purchase lands and die, the law casts the inheritance on the king, who upon office found shall have them; and if an alien have issue a son, and be made denizen, and shall afterwards have another son, and purchase lands and die, the lands will not escheat, but shall go to the youngest son (*s*). If, however, an alien be made denizen, and shall purchase lands, and die without issue, the lands will escheat to the lord (*t*).

In enforcing the lord's right by escheat, it is to be recollected that when lands were held by distinct services there must have been distinct writs of escheat (*u*).

It is also proper to notice, that by particular acts the lord might have been barred of his writ of escheat, as by a fine *come ceo* levied with proclamations in the Court of Common Pleas (*x*), or by accept-

(*p*) 2 Bac. Abr. 243 (G.); Lamb. Peramb. 591, 593; Dal. 23; 3 Keb. 216; 1 Sid. 138; 2 Sid. 83. And see *Doe d. Lushington v. The Bishop of Landaff and others*, 2 N. R. 508. Nor would the customary descent be altered on an escheat of copyhold lands which were afterwards re-granted by the lord to hold by copy; but if copyholds which escheat are not re-granted, they merge in the freehold, or rather the copyhold interest is extinguished, the two tenures being incompatible; ante, pt. 1, pp. 14, 15, 98, 545.

See 8 H. 6, c. 16, and 18 H. 6, c. 6, preventing grants of lands seized into the king's hands before escheators, unless the king's title be found, and until a month after the return of the inquest in the Chancery or Exchequer, except to the party grieved and who tenders his traverse, and which are held to extend to an escheat where no immediate tenure of the crown is found; *Doe & Redfern*, 12 East, 109. In this case it was also held that the 8th sect. of 2 & 3 Ed. 6, c. 8, avoids an inquisition not finding the tenure equally with one alleging total ignorance. *Semble*, that the king's right shall not be

presumed against a mesme tenure without office found; ib.

(*q*) Ante, pp. 632, 633. And see Lamb. 634. Consid. on the law of forfeiture for high treason, pp. 61, 62; Rob. Gav. by Wils. pp. 288, 289.

(*r*) Rob. Gav. by Wils. p. 290.

(*s*) Br. Eschete, pl. 28.

(*t*) Co. Lit. 2 b.

(*u*) Br. Eschete, pl. 13, cites 21 H. 7, 39. Vide reference to the 3 & 4 W. 4, c. 27, abolishing the writ of escheat, &c., ante, p. 629, n. (*h*).

(*x*) A right of entry or action to recover land is limited by the act of 3 & 4 W. 4, c. 27, to twenty years next after the time at which the right shall have first accrued to some person through whom the party claims, or shall have first accrued to the party himself; and by the first section, or explanatory clause, it is declared that the person through whom another person is said to claim shall mean "any person who was entitled to an estate or interest to which the person so claiming, or some person through whom he claims, became entitled as lord by escheat."

ance of fealty, or avowing for rent in a court of record, or accepting rent from the feoffee or heir of a disseisor (y); but the acceptance of rent from the disseisor himself would be no bar to the lord by escheat (s), nor perhaps from the feoffee or heir, if received in ignorance of the feoffment or descent, the acceptance of rent being an act of an ambiguous nature (a).

FELONY DE SE (b).—It frequently happens that the lord of a manor is entitled by grant from the crown to the goods and chattels of every person convicted of *felo de se* (c) within the particular manor, which naturally suggests the propriety of treating briefly of this subject under the head of the present section.

A person who, in possession of the powers of reasoning, lays violent hands on himself, and is wilfully (d) the occasion of his own death, is termed a *felo de se*; but in common parlance it is considered as a perfectly distinct offence from the murder of another (e), and from other felonies; so much so that a grant of *bona et catalla felonum* would not pass the goods and chattels of a *felo de se* (f).

(y) Co. Lit. 268 a & b; Br. Eschete, pl. 18, cites 7 E. 6; 2 Bulst. 153.

(s) See Co. Lit. and Br. Abr. as in the last note.

(a) Doe & Hellier, 3 T. R. 171; ante, pt. 1, pp. 461, 462.

(b) This royalty is *not* specified in the 82 clause of 4 & 5 Vict. c. 35, among the manorial rights excluded from the operation of the act, unless expressly commuted, but it is embraced by the general words "or any other manorial rights whatever."

(c) It is almost needless to notice that the goods and chattels of the offender are totally forfeited by conviction of felony in general, and on conviction of high treason or misprision of treason, petit treason, manslaughter, and even of excusable homicide, of petit larceny, and by outlawry of treason or felony, standing mute when arraigned of felony, &c. &c.

(d) It is said too, that he who in maliciously attempting to kill another happens to kill himself, is a *felo de se*, being the only agent; 1 Hawk. P. C. c. 27, s. 4; 3 Inst. 54; 3 Bac. Abr. 142 (A.); 4 Bl. Com. 189.

(e) Stam. P. C. 183, &c.

(f) The King v. Sutton, 1 Saund. 273; S. C. 1 Sid. 420; S. C. 2 Keb. 526, 533. And see the pleadings in S. C. Lex Man. App. pl. 20. Vide also 1 Vent. 32; 4 Leo. 6, ca. 28.

So a grant of goods and chattels of felons, or felons of themselves, will not entitle the grantee to the debts due to such felons; The King v. Sutton, sup. And see Ford & Sheldon's case, 12 Co. 1 b, 2 a; The Mayor of Southampton v. Richards, 1 Sid. 142; per Shute, Ow. 155; 1 Leo. 202; Lord Northampton v. Lord St. John, 2 Leo. 56; 1 Vent. 32. But in 2 Roll. Abr. 195 (E.) pl. 1, it is held that if the king grant *certain liberties*, and (among other things) grant *omnia bona et catalla felonum de se*, within such a place, it shall pass obligations, specialties, and debts due to the felon; for though in other cases a grant of *omnia bona et catalla* by the king will not pass specialties and debts, yet in the grant of a *liberty it will*; see also Com. Dig. Waife (C.). So by a grant of *goods and chattels* of felons of themselves, the grantee shall have such felon's *ready money*; 2 Sho. 143, Anon.

But no person under the age of discretion, or being *non compos mentis* (g), can be *felo de se*, even though in the latter case the person becomes of sound mind before he dies (h).

Neither is a person who designs to commit suicide deemed a *felo de se*, unless he die within a year and a day after the act (i).

A *felo de se* forfeits all chattels, real as well as personal, belonging to him at and after the time of committing the act, or of which he may be possessed jointly with or in right of his wife (k). And the inquisition having relation to the act of suicide, all intermediate alienations are avoided (l).

But the act of suicide does not work a corruption of blood, so that the lands of inheritance of a *felo de se* are not forfeited, nor is his wife barred of her dower (m).

The forfeiture of the goods and chattels of a *felo de se* is to the king (n), or his lawful grantee (o), and they cannot be claimed by prescription,

(g) It has been thought that a person who kills himself must be *non compos mentis*, on the supposition that no man in his senses could do a thing so repugnant to nature and reason; 3 Mod. 100; but in Hawk. Pl. C. c. 27, s. 3, this notion is justly exploded. And see 4 Bl. Com. 189.

(h) Plow. Com. 260; Fitz. Abr. tit. Coron. pl. 412, 244, cites 8 E. 2, 22 E. 3, 3 Inst. 54.

(i) 3 Inst. 54.

(k) Plow. Com. 260, in *Hales v. Petit*; 3 Inst. 55; 1 Hale, H. P. C. 413. It has been said that *chooses in action* to which a *felo de se* is jointly entitled with another are wholly forfeited, with the exception of the case of two joint merchants; contra, as to joint personal chattels in *possession*; 8 E. 4, 4, Plow. Com. 259 b; 3 Inst. 55; Sir T. Raym. 7. But again it has been said that he shall forfeit a moiety only of such joint chattels as may be severed, and nothing as executor or administrator; Hawk. P. C. c. 27, s. 7; 3 Bac. Abr. 143 (C.).

Equity will relieve against a forfeiture of a chattel by a trustee; *King v. Cooper*, Hardr. 176; even against the king, upon the stat. of 33 H. 8, c. 39; but the application should be to the Court of Exchequer, as a court of revenue; ib. 176, 469; 1 Vern. 439; 2 Atk. 223.

(l) Plow. Com. 260; 5 Co. 110.

(m) Plow. Com. 261; 3 Inst. 55; Britt. c. 7; 1 Hawk. P. C. c. 27, s. 8; Hale, H. P. C. 413. Corruption of blood is taken away by 54 Geo. 3, c. 145, in all cases except treason and murder; ante, p. 631, n. (l).

(n) Where the forfeiture belongs to the crown, it is now usual for the king to make a warrant under his sign manual, on a memorial being presented by a creditor of the deceased, authorising the Ecclesiastical Court to grant letters of administration to the memorialist, and the administrator would be answerable for the debts of the deceased, and could not dispute the validity of the administration against his own act; *Megit v. Johnson*, Dougl. 542; Serjt. Williams's ed. of 1 Saund. 272 a, n. 1.

(o) Ante, p. 638, n. (f). Whether a grant from the crown of the chattels of all felons of themselves will pass the chattels of a *felo de se*, claimed under a franchise forfeited by attainder of treason after such grant, see *The Bishop of Chester v. Webb*, Dy. 107 b.

By the stat of 4 & 5 W. & M. c. 22, it is enacted, that no corporation, lord or lords of manors, or other person or persons, having grants by charter, or other good conveyances, who have enrolled, and had the same allowed in and by the Court of B. R., shall be compelled to plead the same to any inquisition returned by any

as in the case of estrays, waifs, wreck, &c. (p).

It would seem that such goods are not liable in the hands of the king to the debts of the *felo de se*, nor indeed in the hands of the grantee, except to satisfy debts due to the crown (q).

Nor are the goods and chattels forfeited, until it be found by the coroner's inquisition (upon the oath of twelve men) that the party is *felo de se* (r), which finding must be *super visum corporis* (s).

The coroner, who is a judicial officer (t), must be present at the view of the body, or the inquisition will be void (u); and he is at

coroner; and that if there be any corporations, lords of manors, or other persons, who have such charters or grants from the crown for felons' goods, deodands, and other forfeitures, such corporations, &c. shall not be compelled to enrol their whole charters and grants, but bring in the same to the clerk of the crown of the said court, who shall enrol so much thereof as may express and set forth the grants of such felons' goods, deodands and forfeitures, and no more; and from and after such enrolment, no corporation, &c., or other persons, grantees of such goods or forfeitures, shall be compelled to plead the same in the said court to any inquisition thereafter filed therein, touching any goods found thereby; and the act inflicts a penalty upon any clerk of the crown who shall issue out any process against any grantees of such felons' goods, deodands and other forfeitures after such enrolment or entry; see *Lex Man.* p. 74. Vide also the following note in *Serjt. Williams's ed. of Saund. Rep.* p. 272. "Since the passing of this act [4 & 5 W. & M. c. 22, sup.] the coroners have discontinued returning their inquisitions into the K. B. If a man be found *felo de se* by the coroner's inquisition, the jury ought also to find whether he had any goods and chattels at the time he committed the felony or not; and if he had any, to specify the same in an inventory annexed to the inquisition; the form may be seen in the books of practice of the crown, *Crown Circ. Assist.* 90, &c. The goods may then be seized for the use of the king or his grantee, and if trespasses be brought against the grantee for such seizure, he must in his justification set out the grant of goods of felons of

themselves, and the inquisition before the coroner finding the deceased to be such a felon, by which he forfeited his goods, and that those in question were his. If the coroner's inquisition omit finding the goods of the *felo de se*, that, it seems, may be supplied by a writ of *melius inquirendum* directed to the sheriff; 1 H. H. P. C. 415."

(p) *Foxley's case*, 5 Co. 109 b; Co. Lit. 114 b.

(q) 4 Leo. 6, ca. 28.

(r) *Plow. Com.* 260; *Rex v. Ward*, 1 Sid. 150; S. C. 1 Keb. 548. But see S. C. 1 Lev. 8, in which it is said that the goods were held to be forfeited to the king, by the act itself, before inquisition; but this seems to be a mistake; vide n. 1 to 1 Saund. 362.

(s) 3 Inst. 55; 4 Inst. 271; 1 Hale H. P. C. 414, 415; 1 Hawk. P. C. c. 27, s. 11, 12.

(t) But as no other officer is recognised by the law in an inquisition of this nature, it is the duty of the coroner to summon the jury, so that he acts also in a ministerial character; vide also 4 Inst. 271.

(u) 1 Hawk. P. C. c. 27, s. 11, 12; 2 ib. c. 9, s. 23, 24; 2 Hale, H. P. C. 58. See the act of 4 Ed. 1, st. 2. Vide also *Rex v. Ferrand* (the Oldham case), 3 Barn. & Ald. 260; 1 Chitty, K. B. 745; in which the Court of B. R. refused to grant a mandamus to compel the coroner to proceed in the inquiry of the cause of death, the whole proceeding being illegal and extra-judicial; for the jury had first seen the body, and were then sworn by the coroner's clerk, and subsequently were sworn by the coroner, but not *super visum corporis*.

such view to administer the oath to the jury *super visum corporis*. Doubts have been entertained whether a coroner can act by deputy (x); and as it has been a common practice to appoint more than one coroner in a county, there would seem to be some grounds for this doubt (y).

If the body cannot be found, the coroner has no jurisdiction, but a presentment may be made, as well in that case as upon the coroner's omission, either before the justices of oyer and terminer, or before the justices of the peace, who have power by their commission to inquire of all felonies; or the presentment may be in the King's Bench, if the offence be committed in the county where that court sits (z).

It was formerly supposed that the executors or administrators of the deceased could not traverse the coroner's inquisition (a), though they should have a traverse to an inquisition by justices of the peace for the county (b); but it should seem to be fully settled, that the coroner's inquisition may be removed by the executors or administrators of the deceased into the K. B. by *certiorari*, and there traversed (c).

No traverse, however, can be taken to an inquisition not finding the party *felo de se*, as if the inquisition find that he was *non compos mentis* (d); yet, if it should appear that the finding in such a case

(x) *Rex v. Ferrand*, sup. And see *Crompt. Just.* 227; 2 *Hale*, H. P. C. 58.

(y) But see *Ex parte Parnell*, 1 *Jac. & Walk.* 451, where a coroner had acted by deputy for twelve months, and no notice was taken by the court of its illegality; and see 3 *Barn. & Ald.* 264, in *Rex v. Ferrand*.

(z) *Foxley's case*, ubi sup.; *Stanlack's case*, 1 *Vent.* 182; 1 *H. H. P. C.* 414; 2 *ib.* 589; 1 *Hawk. P. C. c.* 27, s. 12; 3 *Inst.* 55. But the grand jury have no power to find such an inquisition under a general charge from the judge of assize; *Rex v. Killinghall*, 1 *Burr.* 17.

(a) 3 *Inst.* 55, cites *Stanf. Pl. Cor.* 183 d. And see *Br. Coron. pl.* 151; *ib.* *Travers per sans ceo*, *pl.* 229, citing 8 *E.* 4, 4, 3.

(b) 3 *Inst.* 55.

(c) 1 *Hawk. P. C. c.* 27, s. 12; 2 *ib. c.* 9, s. 52. Lord Hale also was of opinion that the inquisition was traversable; *Hal. H. P. C.* 416, 417, cites *Barclay's case*, *B. R.* 1658, and *Page's case* in the *Exch.*

P. 45 *E.* 3. And see *Rex v. Storke*, 3 *Keb.* 800, citing *Rowell's* [or *qy. Aldenham's*] case; *Ripley's case*, *T. Jones*, 198; *S. C. Skin.* 45; *The Queen v. Clerk*, *Salk.* 377; *S. C.* 7. *Mod.* 16; 2 *Lev.* 141, in *The King v. Packer*; *The King v. Aldenham* [or *Alderman*], *ib.* 152; 3 *Keb.* 564, 566, 604; *The King v. Stanlake* [or *Stanlack*], 2 *Keb.* 859; *S. C.* 1 *Vent.* 181. Vide also 1 *Vent.* 239, 278.

(d) *Rex v. Storke*, sup. And see *Anon.* 1 *Vent.* 239; 1 *Saund. Rep.* 363, n. 1, by *Serjt. Williams*. But see *Br. Coron. pl.* 151.

Although a coroner returns the inquisition to B. R. finding the deceased *non compos*, yet he is not obliged to return the depositions, unless something should be depending before the court to render it necessary; 2 *Str.* 1073.

See further as to the duty of a coroner, 4 *Inst.* 271; 2 *Hawk. P. C. c.* 9; 2 *Hal. H. P. C. c.* 8; the *stats.* 4 *Ed.* 1, st. 2, and 25 *Geo.* 2, c. 29, furnishing additional powers for the removal of coroners in cases

were obtained by any indirect proceedings of the coroner, the Court of B. R. would grant a *melius inquirendum* directed to the sheriff or to special commissioners, who are to proceed on the testimony of witnesses, but not *super visum corporis* (e). It is, however, the practice not to grant a *melius inquirendum* when the inquisition is traversable (f), nor unless a manifest misbehaviour in the coroner is established by affidavit (g).

It appears that if the goods of a *felo de se* are in the possession of any person who refuses to deliver them up, the king may prefer an information in the Exchequer in the nature of trover and conversion; and that in case of debts being due to the deceased, the king may either proceed by information in B. R., as in the case of *The King v. Sutton* (h), or in the Exchequer by his attorney-general, and that the latter is the most usual practice (i).

And that a grantee of the chattels of a *felo de se* may bring an action of trover for the recovery of goods detained by a third person, and may have a *scire facias* for debts of record, or an action of debt for any other debt due to the deceased (k).

of extortion, neglect of duty, or misdemeanor; *Ex parte Parnell*, ubi sup.; 7 T. R. 52; 2 Barn. & Ald. 203.

A coroner has been committed for falsely returning an inquisition of *felo de se*, the party being lunatic; *Rex v. Wakefield*, 1 Str. 69.

(c) 2 Hawk. P. C. c. 9, s. 53; *Rex v. Bunney*, 1 Salk. 190; S. C. 3 Mod. 238; *Rex v. Hethersal*, 3 Mod. 80; and see Cro. Eliz. 371. And the omission to find the goods of the *felo de se* may be supplied by a writ of *melius inquirendum*; Hale H. P. C. 415; 2 Keb. 859, in Stanlake's case. And see S. C. 1 Mod. 82; ante, p. 639, n. (o).

(f) *Ripley's case*, T. Jones, 198. Yet upon a case clearly made out against the coroner, the court of B. R. would set aside the inquisition; *Barclay's case*, and *Stanlake's case*, ubi sup.; Anon. Vent. 352. In *Stanlake's case*, 1 Mod. 82, Newdigate said, "that in the case of Miles Bartley [Barclay] the inquiry was not filed, and that that was the reason why a new one was granted."

(g) *Rex v. Hethersal*, *Rex v. Bunney*, and *Ripley's case*, sup.; 1 Vent. 182, 352.

(h) 1 Saund. 273 (ubi sup.): In this case the reporter suggests that the infor-

mation ought to have averred the fact that the party was found *felo de se*, and then to have shown the substance of the inquisition, and concluded with a *prout*, &c. And see 2 Lutw. 1342. But this does not seem to be necessary, see N. 7 to 1 Saund. 275 a.

(i) 1 Saund. 272 a, n. (1), by Serjeant Williams.

(k) *Ib.*; Serjeant Williams adds, "in which action it is necessary to state in the declaration the nature of the debt, the grant of such felon's debts to the plaintiff or some of his ancestors, and the inquisition before the coroner, whereby an action, &c., Brownl. Rediv. 181; Asht. 205; and if the debt arises on a bond or other specialty, it seems proper to aver that the deceased had such bond or specialty in the place at the time he killed himself. The defendant in his plea must deny the debt to be due to the deceased, and therefore if the declaration states that the defendant was indebted to the deceased by bond, he must plead *non est factum*; if on a simple contract, *non assumpsit*, &c.; if he says *nil debet* to the plaintiff, he admits that he was indebted to the deceased, and all that will be incumbent for the plaintiff to prove is, that he is a grantee of such goods, and

As the goods of a *felo de se* are not forfeited until inquisition found, the forfeiture is saved by a pardon of the offence before such finding (*l*); but a general pardon after inquisition, without words of restitution, will not revest the property in the administrator of the deceased, though it will operate as a release of a debt which the king might otherwise have claimed (*m*).

The coroner's inquest must show with certainty the nature of the felonious act, and describe the wound, and conclude that it was the cause of the death (*n*), *sic seipsum murdravit*, or it will be quashed (*o*): but if it be full in substance, the coroner may be served with a rule to amend a defect in form (*p*). So where it was found that *G. seipsum felonice submersus fuit*, but it was not said that he *threw himself into the water*, nor did the inquisition conclude with "*and so he died*," the court ordered the inquisition to be amended, the substance, namely, *felonice submersus fuit* being found (*q*).

DEODANDS(r).—Deodands (which sometimes also belong to the lord of the manor by grant from the crown) are defined to be *omnia quæ movent ad mortem* (*s*), and have been supposed to have originated in the notion which our ancestors had of purgatory; for when a person came to a sudden and untimely death, without having time to

the defendant will not be permitted to give any other evidence but payment to the plaintiff."

(*l*) *Rex v. Saloway*, 3 Mod. 101; *Rex v. Ward*, 1 Sid. 150; S. C. 1 Keb. 548. But see S. C. 1 Lev. 8; 1 Keb. 66; ante, p. 640, n. (r). See also *Lock v. Etherington*, 1 Sid. 264.

(*m*) *Toomes v. Etherington*, 1 Saund. 361; S. C. 1 Lev. 120; 1 Sid. 167; 1 Keb. 628. And see the pleadings in this case, *Lex Man. App. ca. 21*; 1 Saund. 352 b; *Rex v. Saloway*, sup. Vide also 5 Co. 110 b, in *Foxley's case*; 2 Mod. 53, in *Rex v. Turvil*; 3 Mod. 242, 243, in *Rex v. Johnson*; 2 Hawk. P. C. c. 37, s. 54.

(*n*) *The Queen v. Clerk*, 1 Salk. 377; S. C. 7 Mod. 16; *Lex Man. 83*, ca. 12. And see *Anon. 12 Mod. 112*.

In the above case of the *Queen & Clerk*, *Holt, C. J.*, held, that a coroner need not go *ex officio* to take the inquest, but ought to be sent for; that to bury the body without sending for the coroner was a misdemeanor, and that the body might be dug up again within a reasonable time, and so

as not to produce infection. And see 2 Hal. H. P. C. 58. But this should be with leave of the court of B. R.; *Barclay's case*, ubi sup., 1 Str. 167, 533.

(*o*) Inquisitions have been quashed for omitting this conclusion; *Rex v. Aldenham* (or *Alderman*), 2 Lev. 152; S. C. 3 Keb. 604; 1 Hawk. P. C. c. 27, ss. 13, 14. But it would not seem to be essential. See *Hales v. Petit*, Plow. 255 a; *Rex v. Warner*, 1 Keb. 66; *The Queen v. Clerk*, ubi sup.

(*p*) *Rex v. Harrison*, 1 Sid. 225; 1 Hawk. P. C. c. 27, s. 15.

(*q*) *Rex v. Glover*, 1 Sid. 259; S. C. 1 Keb. 907. And see *Rex v. Saloway*, 3 Mod. 100.

(*r*) This royalty is *not* specified in the 82nd clause of 4 & 5 Vict. c. 35, among the manorial rights excluded from the operation of the act, unless expressly commuted, but it is embraced by the general words "or any other manorial rights whatever."

(*s*) *Lex Man. 72*; *Bract. l. 3*, c. 5, 122 a; *Hawk. Pl. C. 66*, 67, c. 26, s. 6.

confess and be absolved by the priest and to receive the *extreme unction*, that thing which had been the occasion of his death was given to God, from whence it is called a deodand; but it was a gift to the church, to be distributed by the priests in charities to almsmen to pray the soul of the deceased out of purgatory (*t*).

It is the duty of the coroner to inquire not only of the death of man, but of *deodands*, wreck of the sea, and treasure trove (*u*); and nothing can be forfeited as a deodand till found by such inquest to have been the occasion of death (*x*); but after such inquisition the sheriff is answerable for the value of the thing forfeited, and may levy the same on the town where it fell, so that the inquest ought to find the value of it (*y*).

It should seem that the inquisition has relation to the death, and that the forfeiture cannot be saved by any intermediate alienation (*z*); therefore where the finding by the inquest was eleven months after the seizure, such after-finding was held to be a good justification in trespass against the officer (*a*). But nothing is forfeited where the party receiving an injury does not die within a year and a day (*b*).

The right of property in deodands cannot be claimed by prescription (*c*), but is in the king or such lords of manors and others as have grants thereof inrolled in the crown office (*d*); and when forfeited to the king, they were formerly disposed of for some charitable, or perhaps superstitious uses, by the king's chief almoner; but they are now appropriated as part of the casual revenues of the crown (*e*).

It was an ancient rule that where a person within the age of discretion, viz. fourteen years, was killed by an ox, horse or the like, the animal was forfeited as a deodand; but that if the death were at-

(*t*) Lex Man. 72. Lord Coke's definition of deodands is in these words:—"When any moveable thing inanimate, or beast animate, do move to or cause the untimely death of any reasonable creature by mischance in any county of the realm, (and not upon the sea, or upon any salt water,) without the will, offence or fault of himself, or of any person, they being so found by lawful inquisition of twelve men, being *pretium sanguinis*, the price of blood, are forfeited to God, that is to the king, God's lieutenant on earth, to be distributed in works of charity for the appeasing of God's wrath;" 3 Inst. 57.

Being founded in superstition rather than on principles of sound reason and policy, the Court of King's Bench sanctions the finding of as small a sum only as possible; Fost. Cr. L. 266; 2 Barnard. 82.

And this rule has been acted upon in several recent instances.

(*u*) 4 Inst. 271.

(*x*) Foxley's case, 5 Co. 110 b; 2 Bac. Abr. 294.

(*y*) Hawk. P. C. c. 26, s. 8; 5 Co. 110 b, in Foxley's case; 1 Hale H. P. C. c. 32, p. 419.

(*z*) Arg. Plow. Com. 260 b, in Hales v. Petit; 2 Bac. Abr. 294; Hawk. P. C. c. 26, s. 7.

(*a*) Kellw. 68 b.

(*b*) Hawk. P. C. c. 26, s. 7.

(*c*) Foxley's case, 5 Co. 110 b.

(*d*) Co. Lit. 114 b. See extract from 4 & 5 W. & M. c. 22, ante, tit. "Felo de se."

(*e*) Lex Man. 72; Molloy, 225, c. 1, s. 13; Fost. Cr. Law, 265 266.

tributable to the absence of discretion, as if it were occasioned by a fall from a horse which he was incapable of managing, then there was no deodand (*f*); but this distinction no longer prevails (*g*).

All the ancient authorities are agreed that in *aquâ dulci* a vessel or boat may become a deodand, but that in *aquâ salsa*, even if it be an arm of the sea within a county, there can be no deodand, because of the perils to which persons are exposed by winds and tempests (*h*). The rolls of parliament furnish numerous instances of petitions founded on the latter distinction (*i*), which, however, would appear to be a principle of common law (*k*).

Consistently with this diversity it was resolved upon a trial at bar, that a ship lying at Redriff, in Kent, which at low water turned over, and occasioned the death of one of the shipwrights at work under her, was a deodand to Lord Salisbury, the lord of the manor (*l*).

The above rule that *omnia quæ movent ad mortem sunt deodanda* has been of late years much relaxed; for though formerly, wherever the thing which was the occasion of a person's death was in motion at the time, not only that part which was the immediate occasion of the death was forfeited, but also all things moving together with it (*m*); yet at this day if a man be killed by the wheel of a coach going over him, the wheel *only* is a deodand to the king or the lord of the manor, as being the only immediate cause of the death; and the value set by the coroner's inquest on the wheel or other thing forfeited is taken in lieu thereof (*n*).

Apart from the natural influence of the superstition on which the

(*f*) 8 E. 2, tit. Coron. 389; 3 Inst. 57.

(*g*) 1 Hawk. P. C. c. 26, s. 4.

(*h*) Bract. l. 3, c. 5, 122 a; 3 Inst. 57; 1 Hal. H. P. C. 422—424; Hawk. P. C. c. 26, s. 6; 2 Molloy, 225, c. 1, s. 13.

(*i*) 51 E. 3, number 73; 1 R. 2, nu. 106; 4 R. 2, nu. 33; 1 H. 5, nu. 35; Prynu's Abr. of Cott. Rec. 150, 164, 192, 537; 3 Inst. 58.

(*k*) 3 Inst. 58.

(*l*) 2 Molloy, 225, c. 1, s. 13.

(*m*) See the case of the lord of the manor of Hampstead, 1 Salk. 220, where a cart endeavouring to pass a loaded waggon was driven on a bank and overturned, and a person in the cart was thrown under the wheels of the waggon and killed; and Pollexfen, C. J., and Gregory, to whom the point was referred on the home circuit, gave their opinion that the cart, waggon and all the horses were deodands, as

they all moved *ad mortem*. In this case the Chief Justice at first doubted whether the cart was a deodand, but is reported to have grounded his opinion on the recollection of a case where a man was thrown by his horse in a river (but not by the violence of the stream), and carried by the stream to a mill, and there killed by the wheel, and both horse and wheel were forfeited. Vide also 1 Hale's H. P. C. 420, citing 8 E. 2, Coron. 308, 403, 3 E. 3, Coron. 326, 342, that where a cart fell upon or ran over a man and killed him, both cart and horses were forfeited; and where Hale also notices that if the timber which hung a bell fell and killed a man, the timber and bell were both forfeited; but see *contrà*, *Rex v. Crosse & another*, 1 Sid. 207; post, p. 646.

(*n*) *Rex v. Rolfe*, Post. Cr. Law, 266; *Rex v. Grew*, Say, 249; ante, p. 644, n. (*y*).

deodand has been shown to be founded (*o*), it would be difficult to account for this singular practice of distinguishing between the wheel of a vehicle and the body to which it is attached, the weight of which body may be deemed to have moved to the death in a far greater degree than the action of the wheel; and for which reason it is said, that where a thing *not in motion* causes a person's death, that part only which is the immediate cause is forfeited; but that if a man be killed by a bruise from a waggon wheel, being *in motion*, the loading also would be forfeited, because the weight thereof made the hurt the greater (*p*).

It is quite clear that when a person is killed by a fall from a carriage or from a horse, the carriage or horse is a deodand (*q*); but there is this distinction, namely, that if a man riding through a river is thrown *by the violence of the stream* and drowned, then the horse or carriage is not considered to have moved to the death, and shall not be forfeited (*r*).

And when a person is killed by the fall of part of the loading of a waggon or cart, the part only which fell, and not the whole of the load, is a deodand (*s*).

It is immaterial to whom that which is the immediate cause of death may belong; therefore if *A.* kill *B.* with the weapon of *C.*, the weapon is a deodand, although there be no blame attaching to *C.* (*t*).

In a recent case (*u*) four coroner's inquisitions found that the deaths of four persons were respectively caused on a certain day by a steam engine, and each inquisition imposed on the engine a deodand of 125*l*. The deodands having been estreated into the Court of Queen's Bench, under the 3 & 4 W. IV. c. 99, s. 29, the court refused to stay proceedings on three of the inquisitions, on payment of 125*l*., on the ground that the instrument moving to the death of the party could not be twice forfeited for the same accident, but left the parties to their remedy, by traversing or setting aside the inquisition.

Whatever forms part of, or is affixed to, the freehold cannot be forfeited as a deodand, unless severed before the accident occurs (*x*);

(*o*) Ante, p. 643; 644, n. (*t*).

(*p*) Hawk. P. C. c. 26, s. 6. So it is said that a ship, by a fall from which a man is drowned in fresh water, shall be forfeited, but not the merchandize therein, because they no way contribute to his death; *ib*.

(*q*) Hawk. P. C. c. 26, ss. 3, 4; 1 Hal. H. P. C. 420.

(*r*) Lord Chandos's case, Cro. Jac. 483;

S. C. Poph. 136; S. C. (The King v. Lord Cavendish), 2 Roll. Rep. 23; S. C. cited 1 Salk. 220. And see Poph. 136.

(*s*) Fitz. Forfeiture, pl. 20. And see Jenk. 64, pl. 21; 1 Sid. 207.

(*t*) Br. Forfeiture de terre, pl. 112, cites Doct. & Stud. lib. 2, c. 51, f. 157.

(*u*) The Queen v. The Eastern Counties Railway Company, 2 Dowl. N. S. 293.

(*x*) Hawk. P. C. c. 26, s. 5; 1 Sid. 207.

so that if a man be killed by the sail of a windmill, neither the sail, nor the linen affixed to it, shall be forfeited (y).

So also if a door or gate cause the death of any person, it will not be a deodand (x). So again, if a man be hanged by a bell rope in a church, the better opinion is that the bell shall not be forfeited (a).

ESTRAYS (b).—An estray is any *beast*, not being wild, found wandering within some lordship or manor without authority (c); and swans or cygnets may be taken as estrays (d), but no other fowl (e).

When no one can make title to estrays, called *animalia vagantia* (f), the law gives them to the king, or to lords of manors claiming under a grant from the crown, or by prescription (g), in order that the cattle may not perish.

Within a convenient time, of which a court of law is to adjudge (h), and properly at the next market-day of the nearest market-town (i), the lord should cause proclamation to be made of the seizure of the estray, which proclamation should show the description of the estray, as a horse, cow, &c., and state such other particulars as may enable the owner to recover his property (k), on tender of a reasonable com-

(y) 1 Sid. 207.

(x) Ib.

(a) Ib. Axminster Parish case; S. C. 1 Lev. 136; Lord Raym. 97. And see 6 Mod. 187, in *The Queen v. Wheeler*; Hawk. P. C. c. 26, s. 5.

If a man fall from a hay rick and is killed, it has been said (but not adjudged) that the rick shall be forfeited; Hale, H. P. C. 422, cites 3 E. 3, Coron. 348.

(b) This royalty is *not* specified in the 82d clause of 4 & 5 Vict. c. 35, among the manorial rights excluded from the operation of the act, unless expressly commuted, but it is embraced by the general words, "or any other manorial rights whatever."

(c) If persons have commonable rights within the manor, the lord is to take notice whether the beasts are beasts of the common or not, having the mark of the commoner; Br. Estray, pl. 3; S. C. (Sir John Tiptoft's case) 7 Co. 16 b. And by Kitch. 79, "one cannot take the king's beasts for a stray, though they were within the manor by two years; 39 Ed. 3, fol. 4." And see Fitz. Abr. Estray, pl. 3; 10 Vin. 487, 488.

(d) 7 Hen. 6, 27, 28; Kitch. 79; Fitz. Bar. pl. 6; Br. Double Plee, pl. 41.

(e) 4 Inst. 280.

(f) Bract. l. 3, f. 120; Godb. 150.

(g) Taylor v. James, Godb. 150; Englefield's case, W. Jones, 285; Haslewood's case, Ow. 14; Co. Lit. 114 b. See plea in bar to an action of trespass, alleging seisin in fee of the manor, and a prescription to have estrays, Lex Man. App. 123, ca. 39. Estrays cannot be claimed in gross by prescription; Totterall's case, W. Jones, 283.

(h) Per Hobart, C. J. in *Pleadal v. Gosmore*, Win. 68.

(i) Henly v. Walsh, Holt, 564. But according to some cases, the proclamation should be in the two nearest market towns; Br. Estray, pl. 10; Finch's Law. 45; Kitch. 79; Brownlow v. Lambert, Cro. Eliz. 716. *In three markets adjoining*, Bacon's Use of the Law, 65. Once in the church and twice in the markets, Kitch. 79. Proclamation in markets and church of the parish, 39 Ed. 3, 3; Br. Estray, pl. 4; Britt. 26; Kitch. 78, 79; Scroggs, 133; Brownlow v. Lambert, sup.

(k) Taylor v. James, sup. The owner may claim at any time after the year and a day if proclamation be not made; Britt. 26; Kitch. 79.

pensation for the expense of pasturage, &c.; and until such tender be made, the lord is justified in retaining the estray (*l*). But if any difference arise as to the amount of compensation, the lord should demand a certain sum, in order that the reasonableness of the amends may be tried (*m*), for the owner cannot be presumed to know what sum would make proper satisfaction to the lord (*n*).

The owner should make sufficient proof of the identity of his property, by reference to marks, or by the testimony of his neighbours, &c.; and the lord must, at his peril, restore it, and he cannot put the owner to his oath (*o*).

If no claim be made within a year and a day (*p*), the estray belongs to the lord, but he has not an absolute property in it until the year and a day are passed (*q*); and if the beast should again stray, though the lord may chase it back, yet it has been said that he could not recover it from another into whose possession it should come; and that if it should be seized by the lord of another manor, such second lord should proclaim *de novo* (*r*).

But it should seem that if the estray is taken from the lord, he may maintain a special action on the case for such taking (*s*), and that trespass will lie upon the constructive possession, even before seizure (*t*);

(*l*) Br. Justification, pl. 17, cites 44 Ed. 3, 12; Kitch. 79; Pleadal v. Gosmore, sup.; 10 Vin. Abr. 490 (E.) pl. 5. Holt, 564, in Henly v. Walsh.

(*m*) Taylor v. James, sup.; S. C. Noy, 144; S. C. cited 11 Mod. 89, in Henly v. Welch (or Walsh).

(*n*) Henly v. Walsh, 2 Salk. 686; S. C. Holt, 564. And see Co. Entr. 40, 170 (B.)

(*o*) Taylor v. James, ubi sup. Indeed it should seem that it is sufficient for the owner to prove his right of property on the trial; 2 Salk. 686.

(*p*) Henly v. Welch, 11 Mod. 90; S. C. Holt, 564. According to this case the year and day is to be computed from the first proclamation; yet some suppose that the relation is to the time of the seizure; see Sir H. Constable's case, 5 Co. 107 b; Mo. 11, pl. 43. In the latter case the right of property was held to have relation to the time of seizure, so as to entitle the executors of a lessee for life of a manor to an estray in preference to the reversioner. Vide contra, as between a lessor and lessee of a manor, 12 Co. 100, Anon.

But note, "if an estray happen within

the manor of the wife, if the husband die before seizure, the wife shall have it, for that the property was not in the wife before seizure;" Co. Lit. 351 b, cites 43 Ed. 3, 8; 10 Hen. 6, 11; 39 Ed. 3, 17.

(*q*) Br. Estray, pl. 11, cites 33 Hen. 8; Kitch. 79; Finch's Law, 45; Bacon's Use of the Law, 65; 12 Co. 101, Anon.; Burdet v. Mathewman, Clayt. 107. According to this case the lord could not maintain trespass until the year and day had passed.

(*r*) Pleydell v. Gosmore (or Pleadal & Gosmore), Hutt. 67, ante; Harvey v. Blacklole, Brownl. 236. And see Br. Abr. sup. n. (c). If an estray escape into another franchise before seizure, the better opinion is that the second lord shall have it, the property not being changed; F. N. B. 91 B. n. a; Dy. 338 a, pl. 40.

(*s*) Burdet v. Mathewman, sup.

(*t*) F. N. B. 91 B. And see Smith v. Milles, 1 T. R. 480; Harvey v. Blacklole, Brownl. 236. But see Dy. 338 a, pl. 40, marg. per Noy, Att. Gen. But even trover lies against a stranger for an estray without actual seizure; per Keeling, C. J. obiter, 2 Keb. 589. And see Bul. N. P.

but the lord could not prescribe to amerce any stranger driving the estray out of the manor in the manor court (*u*).

As the right of property in an estray is not changed within the year and day, the lord cannot work the beast (*x*), without being subject to an action of trespass (*y*); but if a cow be taken, it may be milched, because that tends to the preservation of the animal (*z*).

And it should seem that the king's prerogative gives him a property in an estray, even before seizure (*a*).

An estray should be kept *in loco aperto* on land in the lord's possession, being part of the demesnes of the manor; and the bailiff of the lord cannot delegate his authority, nor deliver the estray to be kept by another (*b*).

Should an estray be unruly, the lord may use restraint, as by fettering a colt, but in the same way only as he would fetter his own beasts, to prevent their breaking down fences (*c*).

If two tenants in common be of a manor to which estrays belong, no action would lie by the one against the other tenant in common who should alone seize an estray, unless by prescription the one is to have the first estray, and the other the second, and one of them should take the beast pertaining to the other (*d*).

WAIF.—(*Bona fugitivorum*) (*e*).—Waifs are, in strictness, such stolen goods only as a felon upon hue and cry, or other pursuit, waives or casteth from his person (*f*).

33, where it is said that a lord who seizes an estray or wreck may, before the year and day expired, maintain trover against a stranger, for he has more than a possession, viz. a possession that will turn into a property [cites Sir William Courtney's case, C. B. Salk. MSS.; Pye & Pleydel, Berks, 1750, per Clarke, Bar. S. P.]. Vide also 2 Williams's Saund. 47 a, n. 1; 2 Taunt. 306, 309; 7 T. R. 398.

(*a*) Dy. 199 b, cites 29 Hen. 8; Benl. Rep. [23 pl. 38.]

(*x*) Bagshaw v. Goward (or Gawin), Cro. Jac. 147; Noy, 119; Yelv. 96. And see Godb. 151, in Taylor v. James; Win. 68, in Pleadal v. Gosmore; 12 Co. 101, Anon.

(*y*) Oxley v. Watts, 1 T. R. 12.

(*z*) Bagshaw v. Goward, Noy, 119; Cro. Jac. 148, sup. So a sheep taken as an estray might be sheared; ib. per Noy, Att. Gen., citing Prideux's case.

(*a*) Dy. 338 b, pl. 40.

(*b*) See Taylor v. James, in Godb. & Noy, ubi sup.

(*c*) Winch, 68, 125, in Pleadal v. Gosmore; Hobart, C. J. contra, citing Harvey v. Blacklole, ubi sup.

(*d*) Co. Lit. 200 a.

See as to estrays belonging to infants or others under disability, post, p. 652, n. (i), tit. "Wreck."

(*e*) This royalty is *not* specified in the 82d clause of 4 & 5 Vict. c. 35, among the manorial rights excluded from the operation of the act, unless expressly commuted, but it is embraced by the general words, "or any other manorial rights whatever."

(*f*) Br. Estray and Wayfe, pl. 2; Foxley's case, 5 Co. 109; S. C. Cro. Eliz. 694. Either the stealing or the waiving may be traversed; Br. Issues Joines, pl. 68, cites 12 Ed. 4, 5; ib. Traverse, per &c. pl. 241, cites S. C.

These are forfeited to the king, or to the lord of the franchise (*g*); but are only to be claimed by special grant or by prescription, and do not belong to the lord of a hundred or manor by reason of the hundred or manor (*h*).

And even these shall be restored to the owner if he make fresh suit, that is if he pursue the felon as soon as he has notice of the theft (*i*), and whether he be taken or not, and this at common law; so also by the stat. 21 H. VIII. c. 11, if the owner give evidence upon the indictment, and the felon be attainted (*h*); but after seizure by the king or the lord, the owner cannot retake the goods, though upon fresh suit (*l*), for by the seizure the property is changed (*m*).

If, however, the owner challenge the goods upon fresh suit, and before seizure, they shall not be forfeited (*n*).

In an action against the lord of a manor for misusing a horse stolen from the plaintiff, who alleged that he made fresh suit, the court held that the defendant ought to have traversed the fresh suit whereof the plaintiff had declared, the property being thereby preserved (*o*).

And in trover for goods seized, *ut bona waiviata*, it was adjudged without argument that the defendant ought to allege a felony committed, &c., and that the goods were waived by the felon (*p*).

But if the goods are not seized by the king or the lord, he who was robbed may seize them, even twenty years after (*q*).

Goods stolen and left in the house of the felon, or of another person, or in another's custody, or secreted, even if the felon flee, are not, properly speaking, waifs; and these may be retaken by the owner without fresh suit (*r*).

The goods of a merchant alien cannot be forfeited as waifs, and if

(*g*) Br. Forfeiture de Terres, pl. 110, cites 21 Ed. 4, 16; ib. Estray and Wayfe, as above.

(*h*) Br. Estray, pl. 2, cites 44 Ed. 3, 19. As to prescriptive title, see Co. Lit. 114 b.

(*i*) 7 Hen. 4, 44; Br. Fresh Suit, pl. 4; ib. Estray and Wayfe, pl. 7, cites 21 Ed. 4, 16; Rooke v. Denny, 2 Leo. 192.

(*k*) Scroggs, 130; Br. Estray and Wayfe, 8, cites Dr. & Stud. lib. 2, ca. 3 & 51.

(*l*) Hale, H. P. C. 541; Br. Forfeiture de Terres, pl. 110, cites 21 Ed. 4, 16; Stanf. f. 186, A.; Kitch. 80.

(*m*) Rastal Restitution, 2; Kitch. 80.

(*n*) Dickson's case, Hetl. 64, 65. In

this case the court was divided as to the forfeiture, the goods being seized before the owner came, and the fresh suit not being wholly within view of the felon.

(*o*) Rooke v. Denny, 2 Leo. 192.

(*p*) Davies' Case, Cro. Eliz. 611.

(*q*) Br. Forfeiture de Terres, pl. 110, cites 21 Ed. 4, 16; Kitch. 80.

(*r*) Foxley's case, ubi sup.; S. C. Mo. 572. But it has been held that if a thief leave my horse or his own horse in an inn for a certain sum by the week for his meat, it is not any waif; yet if he leave it there without any agreement for his meat, it is a waif; P. 1 J. B. 22 Vin. Abr. (Waife) 408, pl. 1, 2.

waived by the felon after the alien's death, they belong to the executor of the alien (*s*).

It is the better opinion that the lord may have trespass or trover against a stranger for waif taken out of his manor, even without any seizure (*t*); but that the property is not changed before seizure, so as to give the lord a title as against a second lord, into whose franchise it should stray (*u*).

Bona fugitivorum are the proper goods of him who flies for felony, and they cannot be taken as waifs (*x*); and the lord of a hundred or manor, although he may prescribe for waifs (*y*), cannot prescribe for goods of felons and fugitives (*z*). These, however, may be forfeited to the lord under a special grant from the crown, but not until it is found upon indictment that the party fled for the felony (*a*).

WRECK (*b*).—It should seem to have been a principle of common law, that the fragments of a vessel wrecked at sea, and the lading thereof, were forfeited to the king, in virtue of his prerogative right to all goods of which the ownership could not be established (*c*); and this identification, when the art of navigation was very imperfect, was necessarily a matter of great difficulty. But it has been supposed that goods wrecked upon the sea were given to the king, to compensate for the great charges incurred by the state in scouring the seas of pirates (*d*).

The better opinion is, even at common law, if any person, or any animal, escaped from the vessel, whether alive or dead, whereby the ownership of the lading could be traced, neither the vessel

(*s*) Per Doderidge, J. in *Waller v. Hanger*, 3 Bulst. 19. Vide also *Scroggs*, 130.

(*t*) F. N. B. 91 B.; *Kitch.* 80; *Scroggs*, 132; ante, p. 648.

(*u*) 12 Hen. 8, 10; F. N. B. 91 B. n. a; ante, pp. 648, 649.

(*x*) Br. *Estray and Wayfe*, pl. 2, cites 44 Ed. 3, 19. But see contra, ib. pl. 9, cites 29 Ed. 3, 29, and M. 37 Hen. 8.

(*y*) Ante, p. 650.

(*z*) Br. *Estray and Wayfe*, as sup. n. (*x*).

(*a*) 5 Co. 110 b, in *Foxley's case*.

(*b*) This royalty is *not* specified in the 82nd clause of 4 & 5 Vict. c. 35, among the manorial rights excluded from the operation of the act, unless expressly commuted, but it is embraced by the general words "or any other manorial rights whatever."

(*c*) And this prerogative right would not pass by general words of all privileges, royalties, &c. in a grant from the crown of the seigniori; *Marquis of Winchester's case*, 3 Co. 4 b; *Ford & Sheldon's case*, 12 Co. 2; 2 Roll. Abr. 195 E.; *Com. Dig. Grant*, (G. 6); *Sir W. Jones*, 349; 2 Ca. & Opin. 451; per *Bayley, J.* in *Scrutton v. Brown*, 4 Barn. & Cress. 497; and see *Alcock v. Cooke*, 5 Bing. 340, which case has decided that a grant of duchy lands is subject to the same incidents as a grant of lands belonging to the crown; and see 8 Barn. & Cress. 743, 757, in *Rowe & Brenton*; *Com. Dig. Franchises* (D. 3); 2 Cr. & Jerv. (Ex.) 302, in *Att.-Gen. v. Parsons*.

(*d*) 2 Inst. 167; *Hamilton & Smith v. Davis*, 5 Burr. 2738.

nor the lading were wreck; and the statute of Westm. 1, (3 E. I.,) c. 4, has clearly established that principle, declaring that where a man, a dog, or a cat, escape quick out of the ship, neither such ship, nor barge, nor anything within them, shall be adjudged wreck; and that this act was only a declaration of the common law, may be inferred from various books of great authority, particularly from *Bracton*, written before the statute, and the *Mirror*, written after it (*e*).

And in a very ancient case it was adjudged, that if a ship be pursued by enemies, and after being taken and ransacked is put adrift, and subsequently is cast on land, where her crew arrive, there shall be no wreck (*f*).

Although the above statute speaks generally of a wreck, it extends to the three cases of *flotsam*, *jetsam*, and *lagan*, or (*ligan*) (*g*).

Flotsam maris is where a ship perishes, and the goods float upon the sea. *Jetsam* is where the goods of a ship, which afterwards perishes, are cast into the sea for disburthening it. *Lagan* (or *ligan*) is when any ponderous goods of a vessel, which afterwards perishes, are cast into the sea, and with a view to recover them a cork or buoy is fastened to them; and none of these goods are called wreck, unless driven upon shore (*h*).

When goods are taken as wreck, the owner should prove his right to the property within a year and a day after the seizure (*i*); or his executors or administrators, in case he should die within that period (*k*).

(*e*) See *Bract. lib. 3, f. 120*; *Britt. f. 7, 26, 85*; *Flet. lib. 1, c. 41*; *Mirr. c. 1, s. 13*, and *c. 3, s. De Wrecks*. Vide also *2 Inst. 166, 167*; *Sir H. Constable's case, 5 Co. 107 b*; *Sutton v. Buck, 2 Taunt. 311*.

(*f*) *Fishlake's case, 5 R. 2*, cited *2 Inst. 167*; but see the *bailliffs, &c. of Dunwich v. Sterry, post, p. 654*.

See further as to what constitutes wreck, *22 Vin. Abr. 537 et seq.*

And when goods are cast on land, and are not wreck, and are stolen, the owner may have a commission of *oyer and terminer*, directed to certain persons to inquire of those who did the trespass, and to hear and determine the same, and to make restitution to the party; and a writ to the sheriff to return *probos et legales homines, &c.* before the said justices; *F. N. B. 112, C.*; *2 Inst. 168*.

(*g*) *2 Inst. 167*. "And of them the admiral has jurisdiction." *Sir H. Con-*

stable's case, 5 Co. 106 b.

(*h*) See *Sir H. Constable's case, sup.* And even then the right to them will be preserved by any *indicia* of ownership. *Hamilton & Smyth v. Davis, 5 Burr. 2732*; *Sutton v. Buck, 2 Taunt. 311*.

(*i*) The year and a day is given by the *stat. Westm. 1, c. 4, supra*; *infra*, *p. 654, n. (t)*. Though a (special) property is in law vested in the lord before seizure, yet the year and day are accounted from the seizure, as it is by that act alone the owner can know where to make his claim; *2 Inst. 168*, citing *35 Hen. 6, 27*; and see *Br. Wreck, pl. 2*; *Bailliffs, &c. of Dunwich v. Sterry, post, p. 654*.

The property of infants and others under disabilities is equally bound, after the year and day, as well in the case of wreck, as of an estray; *Sir H. Constable's case, 5 Co. 108 b.*

(*k*) *2 Inst. 168*.

The king is an exception to this limitation of time, and may prove his right of property at any period (*l*).

And if the goods seized as wreck be *bona peritura*, the sheriff may sell such goods within the year and day (*m*).

Although wreck of the sea is the property of the king by common law right (*n*), yet like waifs and estrays it may belong to a subject by grant (*o*), or by prescription (*p*). And it has been adjudged that by prescription wreck may belong to the Lord High Admiral (*q*).

When a subject is intitled to wreck by grant or prescription, he is said to have a constructive possession, and also a special property

(*l*) *Ib.*; *Br. Wreck*, pl. 2, cites 35 Hen. 6, 27; *Kitch.* 24, cites 45 Hen. 6, 32.

(*m*) 2 *Inst.* 168; *Plow. Com.* 466; *Kitch.* 24; and see a provision as to the sale of perishable goods, 1 & 2 Geo. 4, c. 75, s. 27.

(*n*) *Scroggs*, 127. "The king shall have wreck of the sea throughout the whole realm; and sturgeons taken in the sea, or elsewhere within the realm, except some privileged places, be the king's;" *Kitch.* 24. "The king by his prerogative is intitled to large fish, as whales and sturgeons;" *Bract.* l. 3, f. 120.

(*o*) See several opinions on adverse claims to the right to wreck within the honour of Bramber, under grants from the crown, 2 *Ca. & Op.* 452, &c. And note that those adverse claims gave rise to the case of *Biddulph & Ather*, 2 *Wils.* 23, in which it was held that two allowances in eyre, and a judgment in trespass 400 years since, were not conclusive evidence against usage for 92 years past to have wreck of the sea.

Vide also *Chad v. Tilsed*, 2 *Brod. & Bing.* 403, in which an exercise of a right over a small bay for 40 years, was held to be evidence from which anterior usage ought to be presumed, to induce a liberal interpretation of a grant of wreck made by Hen. 8, in favour of the proprietary right claimed; but *Dallas, C. J.* observed, that what is done under usurpation, and in opposition to the clear words of a grant, could not constitute legal usage, but that long usage might be the best exposition of a grant of remote antiquity containing general words,—the rule being, that "if

the language of an ancient grant be obscure or doubtful, constant usage may be resorted to, to expound, though not to control the deed."

[And see 1 & 2 Geo. 4, c. 75, s. 25, 26.]

A grant by the crown to the lord of a manor of "wreck of the sea," will not pass such wreck as jetsam, &c., previously belonging to the office of Lord High Admiral, but a claim is good as to wreck cast on the land, or found floating in creeks within the limits of the manor; *Reg. v. Forty Casks of Brandy*, 3 *Hag. (Adm.)* 257.

To constitute "wreck," the goods must come on shore, and be within the land jurisdiction; but if beyond low watermark, it is deemed to be on the high seas, and to belong to the Admiralty; so if floating between high and low watermark; otherwise if fixed on the land, although water may be round it; *Reg. v. Two Casks of Tallow*, *ib.* 294.

(*p*) *Co. Lit.* 114 b; 2 *Inst.* 168; *Br. Wreck*, pl. 1, citing 11 Hen. 4, 16. See further as to wreck by prescription, 2 *Ca. & Op.* 456; *Saunders' case*, *Mo.* 224. A right to wreck on another man's lands, of necessity gives a right of way over the lands to take it; 6 *Mod.* 149, *Anon.*

(*q*) *Wiggan v. Branthwaite*, 12 *Mod.* 260; *S. C.* 1 *Lord Raym.* 474; *S. C.* *Holt*, 758. In this case, *Holt, C. J.* said, he made no doubt but some wreck might belong to the Admiral by prescription, as that about the Cinque Ports, and such places, where he was most conversant in ancient times, grounding his opinion on the antiquity of the office. Vide 1 & 2 Geo. 4, c. 75, s. 24.

vested in him even before seizure, so that he may have his action of trespass or trover against any person taking it away (r), even though the goods should be part of the cargo of a ship from which some person escaped alive to land (s).

It is clear therefore that if a stranger take possession of wreck after seizure, an action either of trespass or trover lies against him (t); but the absolute property in wreck is not vested in the lord until after the year and day (u).

In the parish of *East Dean* in *Sussex*, there is a custom for the lord of the manor, when a ship is wrecked there, and cast on the lands held of the manor between the flux and reflux of the sea, to bury the dead, and to take care of those who are living and cast on the land, being either sick or wounded, and to preserve the shipwrecked goods for the use of the owners, and for this the lord to have the *best anchor and cable*; and this has been held to be a good custom, it not being unreasonable to have some manner of recompense even for a charitable act (x). But where in trover for an anchor and cable, the defendant pleaded a custom in the manor of *Miching* in *Sussex*, that if any ship or boat sailing on the sea strikes on the land held of the manor and perishes, though it is not wreck, yet the best anchor and cable, &c. belong to the lord of the manor, the plea was

(r) F. N. B. 91 D.; *Smith v. Milles*, 1 T. R. 480; Bul. N. P. 33; ante, p. 648, n. (t); p. 652; but see Hawk. Pl. C. 93, c. 33, s. 24, who says, it seems that the taking of wreck before seizure cannot be felony, because no one has property of the goods at the time of the taking; and see Kitch. 49, citing 22 Ass. 99.

(s) And though the owners within the prescribed period [1 & 2 Geo. 4, c. 75, s. 26] claimed and identified them, and though the taking was before the seizure by the grantee; *The Bailiffs, &c. of Dunwich v. Sterry*, 1 Barn. & Adolp. 831.

(t) 10 Hen. 7, 6; Kitch. 24. The stat. West. 1, c. 4, (already cited) further enacts, that the goods shall be saved and kept by view of the sheriff, coroner, or the king's bailiff, and delivered into the hands of such as are of the crown, where the goods were found; so that if any sue for those goods, and after prove that they were his, or perished in his keeping, within a year and a day, they shall be restored to him without delay; and if not, they shall remain to the king, and be seized by the

sheriffs, coroners and bailiffs, and shall be delivered to them of the town, *which shall answer before the justices* of the wreck belonging to the king. And where wreck belongeth to another than to the king, he shall have it in like manner. And he that otherwise doth, and thereof be attainted, shall be awarded to prison, and make fine at the king's will, and shall yield damages also. And if a bailiff do it, and it be disallowed by the lord, and the lord will not pretend any title thereunto, the bailiff shall answer if he have whereof, and if he have not whereof, the lord shall deliver his bailiff's body to the king. By answering before the justices is meant, that wreck shall not be tried in the admiralty court, but before the king's justices at common law; 2 Inst. 168; and see 15 R. 2, c. 3; Kitch. 24.

(u) Vaugh. 168; *Scroggs*, 127; see 6 & 7 Will. 4, c. 60, post, 655.

(x) *Simpson v. Bithwood*, 3 Lev. 307. See the pleadings in this case in Appendix to *Lex Man.* pl. 41, p. 126.

adjudged ill, no *custom of salvage* being found, and the alleged custom being void for want of any manner of consideration to support it (y).

The lord of a manor has been held not to be intitled to salvage for taking charge of wreck against the owner's consent, and therefore not in the instance of parts of a ship being thrown on the land within the manor, when the servants of the owner are there to take care of them for him (z).

By a recent statute (a), after reciting that goods found derelict, and articles under the denomination of goods *jetsam*, *flotsam*, and *lagam*, are frequently picked up at sea and brought into port, which, if not claimed by any owner within the period limited by law, belonged of right to his majesty in his office of admiralty, but by reason of the smallness of their value would, if prosecuted to condemnation in the High Court of Admiralty, be wholly unproductive, it was enacted, that whenever any such goods, whether picked up at sea or on the shore within the flow of the sea, should be reported to the officers of the customs, notice thereof should be forthwith given by them to the receiver general of droits of admiralty, and that all such goods should be placed at his disposal, subject however to the payment of the duties with which they should be respectively chargeable; and that in case the right owner thereof should prove his claim thereto to the satisfaction of the said receiver general, within the period of twelve calendar months from the day on which they should be so reported, such goods should be restored to the owner, on payment of the duties and necessary charges attending the care of the same, and a reasonable compensation to the amount of one-third of the net value, (after abating the duties and charges aforesaid,) to the salvors thereof; but if no such claim should be established within the period aforesaid, then such goods should be deemed and taken and be condemned to his majesty as droits of admiralty, and might be sold by the said receiver general without any process from the High Court of Admiralty; and the net proceeds thereof, after payment of duties, salvage, and other charges as aforesaid, should be disposed of by him, and carried to the credit of the consolidated fund, in like manner as droits of admiralty were by the therein mentioned act of parliament directed to be applied.

TREASURE TROVE (b).—It would appear by several ancient au-

(y) *Geere v. Burkensham*, 3 Lev. 85.

(z) *Sutton v. Buck*, 2 Taunt. 302.

(a) 6 & 7 Will. 4, c. 60, s. 7. Note,—The practice and jurisdiction of the High Court of Admiralty was much improved

and extended by 3 & 4 Vict. c. 65.

(b) This royalty is *not* specified in the 82nd clause of the 4 & 5 Vict. c. 35, among the manorial rights excluded from the operation of the act, unless expressly

thors (c), that treasure trove, at some far distant period, belonged to the finder; but even before the Conquest, (with perhaps some exceptions) (d), it was a rule of common law, that treasure trove belonged to the king by his prerogative (e), or to some lord of a manor or liberty by special grant (f), or by prescription (g).

The term *treasure* is restricted to gold and silver (h), but it may be either in bullion (i), coin, or plate; and the right of the king or the lord presupposes the impossibility of an identification of the property of the person who concealed it (k); but it is immaterial whether it be found hidden in the ground, or in the walls or roof, or ruins of any house, or other building, or elsewhere (l); though treasure found in the sea still belongs to the finder (m).

We are told by *Glanvill* and *Bracton*, that the fraudulent concealment of treasure trove was an offence punishable by death; but it was long since adjudged that the punishment should be by fine and imprisonment only (n).

FAIRS, MARKETS, TOLLS, &c. (o).—These franchises are annexed to many manors, but are to be claimed only by grant from the crown (p), or by prescription (q); and even if the grant of a fair or

commuted, but it is embraced by the general words "or any other manorial rights whatever."

(c) Staunf. f. 39; Glanv. l. 1, c. 1; l. 14, c. 2; Britt. 7, 26, 85; Bract. l. 3, f. 120; 2 Inst. 168; 3 Inst. 132.

(d) 3 Inst. 133.

(e) Kitch. 78; 3 Inst. 132, 133.

(f) Ib.; Fitz. Abr. tit. Corone, pl. 241, 436, cites 22 Ed. 3; 8 Ed. 2; Kitch. 78.

(g) Co. Lit. 114 b; 3 Inst. 132, 133, cites 21 Hen. 6, tit. Prescription, 4; 22 Ed. 3, cor. 241; 1 Hen. 7, 33; 9 Hen. 7, 20; 46 Ed. 3, 16; Stamf. pl. cor. 39 b, lib. fo. 109 b.

(h) 3 Inst. 132.

(i) "Veins of gold and silver in the ground of subjects also belong to the king by his prerogative, for they are royal mines;" 3 Inst. 132. But this has been doubted, unless the quantity of gold or silver was of greater value than the quantity of base metal; Plowd. 336; 1 Bl. Com. 294. And now by 1 W. & M. st. 1, c. 30, and 5 W. & M. c. 6, mines of copper, &c., shall not be looked upon as royal mines, though gold or silver may be extracted from them in any quantities; but

the king may have the ore (other than tin in Devon and Cornwall) paying the price stated in the act.

(k) Stath. tit. Coron.; Kitch. 78; or by his executors, Fitz. Abr. Coron. 446, cites 22 Hen. 6.

(l) Bract. l. 2, f. 10; 3 Inst. 132.

(m) Britt. f. 26; Kitch. 78; 2 Inst. 168.

(n) Stath. tit. Coron.; Fitz. Abr. Coron. 265, cites 22 Ed. 3; 3 Inst. 133; Kitch. 49. Treasure trove as well as wreck shall be inquired of by the coroner; 3 Inst. 133; ante, pp. 643, 644, (tit. "Deodand").

(o) The royalties of "fairs and markets" (of course including "tolls") are specified in the 82nd clause of 4 & 5 Vict. c. 35, among the manorial rights excluded from the operation of the act, unless expressly commuted.

(p) As an evil rather than a good might result from the establishing of additional fairs or markets, it is usual, previous to a grant by the king, to have a writ of *ad quod damnum* issued and returned; *The King v. Butler*, 3 Lev. 222; 2 Vent. 344; and see 3 Burr. 1818, in *Rex v. Marsden*, 7 Barn. & Cress. 49, n.

(q) Co. Lit. 114 b; 2 Inst. 220; and

market be preceded by a writ of *ad quod damnum*, or the usual words *quod non sit ad nocumentum*, &c. be omitted in the grant, yet the patent shall be repealed by *scire facias*, if it be to the nuisance of the king or others (*r*). But it has been held, that an uninterrupted user for twenty years gives a *primâ facie* right to a fair or market, and affords a sufficient answer to an indictment for a nuisance to a highway, although the party is liable to be proceeded against for the usurpation of the franchise (*s*).

The grantee or owner for the time being of the franchise of a market may have an action on the case against a person who erects a stall upon his own ground near to the market for selling meat, &c., though he should not take toll or usurp a franchise (*t*). And by grant or prescription, the owner of such a market may prevent persons, being inhabitants of the place, from selling in private houses (*u*). In the case of Dorking market, tried before Heath, J. (*x*), a man had fitted up an inner room in a public house, and corn was pitched and sold there; and the plaintiff recovered against him in an action on the case on the same ground as in the Prior of Dunstable's case, because it was done secretly.

And in the case of the *Bailiffs of Tewkesbury v. Bricknell* (*y*), it was held that an action on the case for toll lies equally against the seller of corn by sample as the seller of corn pitched in bulk.

A custom to erect booths on the waste during fairs has been held to be good. In *Tyson v. Smith* (*z*) trespass was brought for breaking and entering the plaintiff's close, and erecting stalls, posts, booths and tables there, and the defendant justified under a custom that at

see *Hill v. Smith*, 10 East, 476; 1 Wils. 112. Tenants in ancient demesne have a qualified exemption from toll; ante, pp. 582, 583.

(*r*) 2 Inst. 406; *Rex v. Butler*, ubi sup.; 2 Roll. Abr. 140, pl. 2; Com. Dig. Market (C. 2). And notwithstanding the issuing of the writ, an action would lie by the private owner of a market that was injured; 1 Sir W. Bl. 581. If a fair or market was set up without patent, to the nuisance of another, the party aggrieved might have had an assise of nuisance, returnable into the King's Bench; F. N. B. 184, A.

(*s*) *Rex v. Smith et al.*, 4 Esp. 111; and see *Yard v. Ford*, 2 Saund. 172; ib. 175, n. 2.

A *quo warranto* will not lie merely for encouraging and promoting the holding of a market, it being at most a misdemea-

nour, and no usurpation of a franchise; *Rex v. Marsden*, 3 Burr. 1812; S. C. 1 Sir W. Bl. 579. And it seems doubtful whether an information in nature of a *quo warranto*, for a usurpation upon the crown by holding a fair or market, can be granted on the application of a private person; ib.

(*t*) *Mosley v. Chadwick & others*, 7 Barn. & Cress. 47, n. (a).

(*u*) *Sir Oswald Mosley v. Walker*, 7 Barn. & Cress. 40; 9 Dow. & Ry. 863. And see *Prior of Dunstable's case*, 11 Hen. 6, 13; Br. Abr. Prescription, pl. 98; 7 Barn. & Cress. 47, n.; Com. Dig. tit. Market (F 2); Vin. Abr. tit. Market (B.); 2 Roll. Abr. tit. Market (B.), pl. 1.

(*x*) 2 Taunt. 133.

(*y*) 2 Taunt. 120. And see *Moseley v. Pierson*, 4 T. R. 104.

(*z*) 6 Adol. & Ell. 745.

fairs holden at certain times of the year on some part of the commons and waste of a manor to be named by the lord of the manor, (the locus in quo being parcel of such commons and waste, and named by the lord,) every liege subject exercising the trade of a victualler might enter at the time of the fairs and erect a booth, &c., and continue the same for a reasonable time after the fairs for the more conveniently carrying on his calling, paying 2*d.* to the lord :—and the court of B. R. held that the custom was reasonable and the plea good.

But it is at least very doubtful whether the grantee of a newly created market can maintain an action for the disturbance of his franchise against a person selling marketable articles in his own shop within the limits of the market place on the market day (*a*).

It has been adjudged that if a grantee of a market suffer another to erect a market in his neighbourhood, and to use it uninterruptedly for three and twenty years, he is barred of an action on the case for disturbance of his franchise (*b*).

The lord of a manor having a grant of a fair or market generally, may hold it at any place where it can be most conveniently held (*c*); and if the grant prescribe a particular vill, the lord may remove the fair or market to any situation within the precinct of his grant; and after notice may have trespass against any person going upon his soil in the old market-place (*d*).

Upon the grant of a fair or market the lord shall have a court of *Piepowdre* (or *Pipowders*) as incident thereunto without any special words, it being for the advancement of justice and not of a private interest (*e*).

And the right to appoint a clerk to the fair or market is also incident to the franchise, and he will be intitled to his reasonable fees (*f*).

(*a*) *The Mayor, &c. of Macclesfield v. Pedley*, 4 Barn. & Adol. 397. And see *Prince v. Lewis*, 2 Car. & Pay. 66.

(*b*) *Holcroft v. Heel*, 1 Bos. & Pul. 400.

When equity will interfere to enforce the lord's right to tolls, see *Mayor, &c. of Reading v. Winkworth*, 5 Pri. 473; *Duke of Norfolk v. Myers*, 4 Madd. 83; ante, pt. 1, p. 535.

(*c*) *Dixon v. Robinson*, 3 Mod. 107; *Rex v. Cotterill*, 1 Barn. & Ald. 67.

(*d*) *Curwen v. Salkeld*, 3 East, 538.

(*e*) 2 Inst. 221; 4 ib. 271. The Court of Pipowders is incident to a fair or market as a Court Baron is to a manor. It is, however, a court of record, to be holden

before the steward, and its jurisdiction consisteth in these four essentials: 1. The cause of action must arise in the time of the particular fair or market. 2. It must relate to things which concern the market; therefore, if one slander particular wares to the injury of another previous to the market, the court has no jurisdiction. 3. It must arise within the precinct of the fair or market. 4. The plaintiff or his attorney must take an oath according to the stat. 17 Ed. 4, c. 2, and 1 R. 2, c. 6; but this does not conclude the defendant; *Hall & Jones's case*, cited 4 Inst. 272. And see *Hall v. Pyndar*, Dy. 133 a, and the several cases there referred to.

(*f*) 4 Inst. 273, c. 61.

But as a toll is a matter of private benefit to the lord, it is not necessarily incident to a fair or market, as was adjudged in the case of *Northampton (g)*, wherein it was resolved that if the toll granted with a fair or market be unreasonable, the grant of the toll is void, and the fair or market shall be accounted a free fair or market:— and the exaction of an outrageous toll would intitle the king to seize the franchise into his own hands (*h*).

In the case of *Brett v. Beales (i)* Lord Tenterden referred to *Truman v. Walgham (k)* and other authorities, establishing that one may have *toll-traverse* by prescription, so also *toll-thorough* for some reasonable cause to be shown, as to repair a way, &c.; but the judgment of the court in the principal case was, that the repair by the corporation of Cambridge of certain bridges over the Cam, and some of the streets, was not a sufficient consideration to support a claim of toll-thorough in all parts of the town.

It has been decided that although every person has a right to go into a public market to buy and sell without paying any toll, if none be due by prescription, yet the owner is intitled to *Stallage* and *Picage*, that is, to a compensation for placing a stall, and for any breaking up of the ground; and the remedy for this is trespass (*l*).

These franchises may be forfeited by non-user (*m*), which would

(*g*) M. 39 & 40 Eliz. cor. reg.; 2 Inst. 220; S. C. (*Heddy v. Wheelhouse*), Cro. Eliz. 558. And see the Mayor, &c. of *Northampton v. Ward*, 2 Str. 1239; S. C. 1 Wils. 115; *Daventry case*, (*Holloway v. Smith*), 2 Str. 1171; *Lowden v. Hieron*, 1 Holt, N. P. 547; 6 East, 438; Com. Dig. Market, (F 1); 7 Barn. & Cress. 50, in *Mosley & Walker*.

In a late case the terms of grant of a fair in the charter were *cum omnibus liberis consuetudinibus, &c. ad feriam pertinentibus*; and the Court of Queen's Bench held, that the judge improperly directed the jury that if the charter were one simply of grant, those words might signify tolls; *semb. aliter*, if the charter were one of confirmation and supported by immemorial usage; *Earl of Egremont v. Saul*, 6 Adol. & Ell. 924.

(*h*) 2 Inst. 219; 1 Wils. 114.

(*i*) 10 Barn. & Cress. 508; S. C. 1 Moody & Malk. 416.

(*k*) 2 Wils. 296. A special consideration need not be shown to support a claim to *toll-traverse*; *Rickards v. Bennett*, 1

Barn. & Cress. 223; 2 Dow. & Ry. 389. See as to the evidence requisite to support toll-traverse, *Vines v. Reading Corporation*, 1 You. & Jerv. 4; 4 Bing. 8. Persons interested in the result may, from necessity, be competent witnesses in an action for toll-traverse; *Lancum v. Lovell*, 9 Bing. 465. And see as to the distinction between toll traverse and toll thorough, *Lord Pelham v. Pickersgill*, 1 T. R. 660; *Lord Falmouth v. George*, 5 Bing. 286.

(*l*) The Mayor, &c. of *Northampton v. Ward*, ubi sup. And see Mo. 474; 1 Barn. & Ald. 71, in *Rex v. Cotterill*. A table placed in an open market is considered as a stall; *The Mayor, &c. of Norwich v. Swan*, 2 Sir W. Bl. 1116.

Both stallage and picage are derived from the right to the soil. See as to both, Com. Dig. Market (F 2.); 2 Roll. Abr. 123; 15 Vin. 244, 245.

And the party intitled to stallage may waive the tort and bring assumpsit; *Mayor, &c. of Newport v. Saunders*, 3 Barn. & Adol. 411.

(*m*) *Leicester Forest case*, Cro. Jac. 155.

naturally induce the presumption of a surrender of them to the crown (*n*), or by mis-user; so that should the grantee neglect to perform the terms prescribed by the patent, it might be repealed by writ of *scire facias* (*o*).

FREE CHASE OR PARK (*p*). (*Free Warren, Free Fishery, &c.* (*q*)).—Although these subjects are in some degree connected with the preceding considerations on manorial franchises, the author does not feel that they are of a nature to call for any lengthened commentary in the present treatise.

The reader, however, is reminded, that *Free Chases or Parks* were tracts of land granted to a subject under one or other of those names, or grounds converted by the owner into chases or parks under a license from the crown, and were considered as smaller forests; but that they were not subject to the forest laws, the grantee having no power to appoint officers of the forest nor to hold courts (*r*):—it is also to be recollected that these franchises can only be claimed by grant or by prescription (*s*).

And the author is induced to avail himself of this opportunity of referring the student to Lord Coke's 4 Inst. p. 289 et seq., and to Mr. Justice Blackstone's Commentaries, vol. 2, c. 27, for a clear and interesting exposition of the forest laws as they existed in the Saxon æra, and as new modelled upon the Norman conquest; and the more so as it will be seen by the legal authorities adverted to, that the arbitrary and oppressive character of the forest laws was maintained by the establishment of several courts (*t*) imitative of those ordained

(*n*) Br. Franchise, 10, 26.

(*o*) Ib. 14, 22; 12 Mod. 271.

(*p*) These royalties are all specified in the 82nd clause of the 4 & 5 Vict. c. 35, among the manorial rights excluded from the operation of the act, unless expressly commuted.

(*q*) A park consists of vert, venison and inclosure, and a determination in either of these requisites amounts to a disparkment; Sir Charles Howard's case, Cro. Car. 60.

(*r*) 4 Inst. 314. But it appears that royal forests were sometimes granted by the crown to a subject, with express authority for the administration of justice there; Leicester Forest case, sup.

(*s*) See Co. Lit. 114 b; 11 Co. 87 b. Lord Coke (4 Inst. 318) says, "And it is to be observed that a man may have a free chase as belonging to his manor in his own woods, as well as a warren or park

in his own grounds; for the chase, warren and park are collateral inheritances, and not issuing out of the soil, as the common doth; and therefore if a man hath a chase in other men's grounds, and after purchase the grounds, the chase remaineth."

As to commonable rights and other like privileges in chases or parks, (and which may also exist by prescription in forests,) see 4 Inst. 298, 299, &c.

(*t*) The courts of the forest were:—

1. The *Woodmote* Court, or Court of Attachments, kept before the verderors every forty days for the presentment and inrolment only of attachments *de viridi et renovatione*. 2. The Court of Survey or lawing of dogs, held every third year. 3. The *Swainmote* Court held thrice in the year by the steward (who acted ministerially only) before the verderors, (there being most commonly four in each forest,) as

by our Saxon ancestors for the more substantial and legitimate objects of maintaining the good order of society, and the relative rights of its component members, and of which the author proposes to take particular notice in the introductory part of the next and concluding chapter (*u*).

FREE WARREN (*x*).—The franchise of free warren is to be claimed only by grant from the crown, or by prescription which supposes such a grant (*y*); and the effect of it is, to vest in the grantee a property in such wild animals or inferior species of game as are deemed the beasts and fowls of warren (*z*).

If a person having a free warren alien the lands, the right of warren is extinct, nothing being reserved, and the land only being granted; but a reservation of the warren would be good (*a*).

judges of the court; and at this court the attachments of the foresters were presented, and the freeholders within the forest were to appear and make inquests and juries; but the court did not follow up its conviction by judgment; and 4. The Court of the *Justice Seat*, holden before the chief justice of the forest, called in the books *justice in eyre*, and which could not be kept oftener than every third year, and only on forty days' summons, one writ of summons being directed to the sheriff of the county. And at the sessions of this *justice in eyre*, he was to proceed on the presentments made at the Swainmote Courts before a jury. It should seem that a presentment or indictment of this court previously found in the Swainmote was not traversable, but that an indictment in the Court of the Justice Seat not found in the Swainmote might be traversed, it having been presented but by one jury; 4 Inst. 291, cites 8 Ed. 3; *Itinere Pickering*, 147 a; 21 Ed. 3, 48. See further as to these courts, *Com. Dig. Chase (R)*.

(*u*) It appears almost unnecessary to remind the student, that by the charter 9 Hen. 3, (*carta de foresta*,) (the immunities of which Mr. Justice Blackstone observes, "were as warmly contended for and extorted from the king with as much difficulty as those of Magna Carta itself," 2 *Com. p.* 416;) many forests were disafforested and the penalties of the forest

laws greatly relaxed, and that by many subsequent statutes and long disuser "this prerogative is now become no longer a grievance to the subject."

(*x*) Ante, p. 660, n. (*p*).

(*y*) 11 Co. 87 b; Co. Lit. 114 b; Br. Warren, pl. 1, cites 3 Hen. 6, 12; Manw. Warren. Forrest. pl. 43. And in trespass against the gamekeeper of the lord of the manor, it lies upon the defendant to prove a royalty in justification of the entry upon the plaintiff's land, by showing a grant of a free warren from the crown; *Pickering v. Noyes*, 4 Barn. & Cress. 639. And the right will not pass *de novo* merely by the general words "free warren," &c., *Carr v. Smith*, cited 2 Cr. & Jerv. (Ex.) 294, in *Att. Gen. v. Parsons*.

(*z*) See F. N. B. 86, 87, and the notes. Beasts and fowls of warren are hares and rabbits, pheasants and partridges; Manw. 95. In Co. Lit. (233 a), a roe is also named as a beast of warren, and quail, rail, woodcock, herne, mallard, &c. as fowls of warren. Grouse are not birds of warren; *The Duke of Devonshire v. Lodge*, 7 Barn. & Cress. 36. Beasts of park or chase are buck, doe, fox, martrou and roe; Manw. 94; Co. Lit. 233 a; 8 Co. 138 b. Beasts of forest or venary are hart, hind, hare, boar and wolf; Manw. 91; 8 Co. 138 b.

(*a*) Br. Warren, pl. 3, cites 35 Hen. 6, 55.

And if a person having a manor in which there is a free warren should enfeoff another of the manor, *with the appurtenances*, the warren would not pass (b), for a warren is not necessarily appurtenant to a manor, though it may be so by prescription (c).

The franchise of free warren implies a sole and *exclusive* (d) power of killing game within the ambit of the grant, on condition of preventing others from doing so; and therefore, as Sir William Blackstone says (e), "a man that has the franchise of warren is in reality no more than a royal game-keeper."

Whether or not a person may have a property *ratione soli* in such animals *fera natura* as are denominated game, or how far such possible right may be affected by any manorial privileges in lords of manors emanating from the king, and founded on principles of feudal tenure, does not appear to be a question so immediately connected with the subject of the present treatise, as to call for particular animadversion in this place (f); but assuming that a right of property

(b) Br. Warren, pl. 7. And see *ib.* pl. 5, citing 14 Hen. 4, 6; Vin. Ab. Warren, pl. 3, marg. And see as to the effect of the words, "and to have free warren in all *demesne* lands in the manor, &c.," Att. Gén. v. Parsons, 2 Cr. & Jer. (Ex.) 279. In that case (p. 308) Lord Lyndhurst, C. B., on delivering the judgment of the court, said, "though the word '*demesne*' may, in some cases, be applied to any fee simple lands a man holds, yet it is more correct and usual to apply it to the lands of a manor, which the lord of that manor either actually has, or potentially may have, in *propriis manibus*."

(c) *Bowlston v. Hardy*, Cro. Eliz. 547; S. C. 5 Co. 104 a; *Morris v. Dimes*, 3 Nev. & Mann. 671; S. C. 1 Adol. & Ell. 654. By prescription a person may have a warren in a forest, but there must be an allowance of it in eyre, that is in the court of the forest; Sir Richard Harrison's case, W. Jones, 280.

(d) But a free warren is not necessarily an *exclusive* right, for in one case a prescription for the lord of the manor, his tenants and farmers, to fowl in the warren of another, was held good upon demurrer; *Davies' case*, 3 Mod. 246.

(e) 2 Com. 39.

(f) The author has pleasure in referring the reader for much useful informa-

tion on the character of the game laws of this country, and for the means of forming his own judgment on the controverted right of lords of manors to sport over the grounds of others within their respective seigniories, to Mr. Chitty's Treatise on the Game Laws, and to Professor Christian's Notes to the Commentary of Mr. Justice Blackstone (2 Com. 27), on the right of property in such animals *fera natura* as come under the denomination of game, in which the learned professor opposes the doctrine advanced by Sir W. Blackstone, that the sole property of all the game in England, and, as a consequence, the exclusive right of taking and destroying it, is vested in the king, as the ultimate proprietor of the soil. The reader's particular attention is also called to a useful work published a few years since, entitled "A Treatise on the Rights of Manors as deduced from the most ancient and best Authorities, with a Report on the Game Laws, and Comment," the author of which wholly dissents from the arguments of Professor Christian.

The author is induced to express his assent to Sir William Blackstone's position, that the sole right of property in all wild animals became vested in the king from the period, at least, of the establishment of the feudal system in this country; and he con-

may exist in this species of animal *ratione soli* (g), yet it is clear that

ceives that the right of the lord of the manor or other royalty to take and kill game within the confines of his seignior, either as an exclusive right or concurrently with the owners of the soil, is founded on the prerogative title of the king. Whether the right be exclusive or concurrent must depend on the words of the grant, or evidence of usage, for the right may exist by prescription, which presupposes a grant. But an exercise for several years of the right of sporting, which might be referrible to the tenant's acquiescence, will not induce the presumption of an ancient grant; *Pickering v. Noys*, 4 Barn. & Cress. 639.

It is clear that an ancient grant from the crown of the franchise of taking and killing game within a limited district, would give the grantee the power of going over the grounds of others without being considered a trespasser. Such a grant would in fact vest the franchise of a *free warren* in the grantee, which alone can justify a person's sporting on another's soil, or, indeed, even on his own; 2 Bl. Com. 39; *Keeble v. Heckeringill*, 11 Mod. 74; 1 Chit. G. P. 167. Vide also the above case of *Pickering v. Noys*, in which the Court of B. R. held that it was for the defendant, upon the issue joined, to prove first that he had such a royalty, and secondly that at the time in question he was in the due exercise of it.

It does not appear to the author that the lord of a manor can claim any right of sporting over grounds not in his own possession under the provisions of the several acts of parliament authorizing lords of manors to appoint game-keepers, and empowering such keepers, for the preservation of game, to search for noxious animals and engines of destruction, and also to kill game for the use of the lord. The author apprehends, indeed, that the powers of game-keepers appointed under the acts of parliament alluded to, would be held to extend only (as far as they may be protected by the provisions of those acts against an action of trespass) to such lands as should be in the

lord's immediate possession, and those perhaps belonging to others, over which the lord had a right to sport under an ancient grant from the crown, or by prescription. The case of the Earl of Ailebury v. Pattison, Dougl. 28, clearly shows that the courts of law are disposed to circumscribe as much as possible the powers of the acts of 22 & 23 Car. 2, and 5 Anne, and other subsequent statutes, authorizing lords and ladies of manors to appoint game-keepers; for in that case Lord Mansfield held, that the words "*manors or other royalties*" in the first-mentioned act, did not extend to a hundred or wapentake, which would have been expressed if the legislature had meant the act to apply to royalties of a higher nature than a lordship or manor.

[But N. B. The provisions of the act of 1 & 2 Will. 4, c. 32, have somewhat extended the powers of lords of manors over game. The act not only authorizes the lord to appoint gamekeepers to preserve or kill game within the limits of the manor for the lord's use; but by the 10 sect. the lord may pursue and kill game upon the wastes and commons, and give authority to any certificated person to enter upon such wastes and commons for the purpose of pursuing and killing game. The 13 sect. authorizes lords of manors to appoint one or more person or persons as a gamekeeper or gamekeepers to preserve or kill the game within the limits of such manors for the use of the lords, and to seize for their use all dogs, nets, &c. used for taking or killing game within the limits of such manors by any person not authorized to kill game for want of a game certificate. And by the 15 sect. the owner of land in Wales, of the clear annual value of 500*l.*, not being within the bounds of any manor, may appoint a gamekeeper to preserve or kill the game thereupon.]

The author would further submit, that the franchise of sporting over the grounds of another under a grant to the lord of a manor may be lost, as well by a conveyance of the demesnes of the manor without re-

such right would be subservient to the franchise of free warren (*h*); and it should certainly seem that a free warren over the lands of another person may exist by prescription (*i*).

When the right of property in wild animals can be claimed *ratione privilegii*, it nevertheless continues only so long as they remain within the limits of the particular franchise, except, indeed, that the property would not be changed by being hunted by the owner, or even by a stranger, out of the free chase or warren, and killed in the grounds of another person (*h*).

FREE FISHERY, &c. (l).—A free fishery, in its more ordinary acceptance, means an exclusive right of taking and killing fish in an

serving the franchise, as by non-user, such discontinuance of the exercise of the right inducing the presumption of a release and extinguishment of it, which extinction seems to be perfectly consistent with established principles of tenure, as between the lord and the owner of land within his manor. (See ante, p. 661, as to the extinction of a free warren.) But it is probable that on an extinguishment of the right of the grantee of the crown, the prerogative right to the extent of that formerly exercised by the lord under the particular grant would revive.

In a recent case relief was refused in equity to a cestui que trust, against whom an action of trespass had been brought for sporting over the manor, the title not being sufficiently established, the court observing that, even if it had, all that the cestui que trust could claim was, to have a rateable proportion of the rents and profits derivable from letting the privilege; *Hutchinson v. Morritt*, 3 You. & Coll. (Ex. Eq.) 547.

(g) The case of *Sutton & Moody, Salk. 556*, 1 Lord Raym. 250, Comb. 458, 5 Mod. 375, 12 Mod. 144, is an authority that the courts will presume a right of property to game in the owner of the land on which it is killed, *ratione soli*, as against a perfect stranger; but it is a possessory property only; *F. N. B. 87 A*. And see 12 Hen. 8, 10; 11 Co. 87 b; 4 Inst. 320; 2 Bl. Com. 419; post, n. (k).

(h) *Sutton v. Moody, sup.* The frequency of these grants is urged by Sir

William Blackstone in favour of his position, that the exclusive right of taking and destroying game belonged to the king; 2 Com. 417.

(i) Br. Warren, pl. 2, cites 34 Hen. 6, 28; ib. pl. 3. And see *Davies' case, ante*, p. 662, n. (d); *Rex v. Talbot, Cro. Car. 311*; *Fowler v. Seagrave, Bulst. 254*; *Sutton v. Moody, sup.* But an alienation of the land without reserving the warren would extinguish the right; Br. Warren, pl. 3, cites 35 Hen. 6, 55; *Dy. 306*; ante, p. 661.

The grant of free warren would seem to give a right to appoint a warrener to preserve the game, who is justified by ancient usage in killing dogs, cats and vermin; *Wadhurst v. Damme, Cro. Jac. 45*.

(k) 2 Bl. Com. 419. The learned judge there also states (and so the law clearly seems to be) that "if a man starts game on another's private grounds and kills it there, the property belongs to him on whose ground it was killed, because it was also started there, the property arising *ratione soli*: whereas if after being started there it is killed in the ground of a third person, the property belongs not to the owner of the first ground, because the property is local, nor yet to the owner of the second, because it was not started in his soil; but it vests in the person who started and killed it, though guilty of a trespass against both the owners." And see *Churchward. v. Studdy, 14 East, 249*.

(l) Ante, p. 660. n. (p).

arm of the sea (*m*), or navigable river (*n*) being an arm of the sea (*o*), under a grant from the crown (*p*), and is therefore considered as a royal franchise (*q*); and as the jealousy with which this privilege was viewed by the people led to a declaration in King John's Charter (c. 47), that where the banks of rivers had been first defended in his time they should be laid open, and in the charter of 9 Hen. III. c. 16, that no banks should thenceforth be defended but such as were so in the time of Henry his grandfather (*r*), it has been suggested that "a franchise of free fishery ought now to be at least as old as the reign of Henry II. (*s*)."

Although it has been supposed that a *several* fishery is a perfectly distinct franchise from a free fishery, in that the owner of a several fishery "must be, or at least derive his right from, the owner of the soil (*t*)," which is not requisite in a free fishery, for that term imports the right to fish in the waters of another (*u*); and from a *common* of piscary, in that the latter does not imply an exclusive right (*x*); yet

(*m*) There can be no prescription for a right to fish in the sea, as annexed to certain tenements, such right being common to all the king's subjects; *Ward v. Cresswell*, Willes, 265; *Kitch.* 45, cites 8 Ed. 4, 10. "If the water ebb and flow upon my land every one may fish there;" per Choke, *ib*.

But the qualified common law right of the public to use the sea and the sea shore does not extend to the right of bathing in the sea; *Blundell v. Catterall*, 5 Barn. & Ald. 268.

Fishing with stake nets on the sea coast near the mouth of a river is not prohibited either by the statute or the common law of Scotland; *Earl of Kintore* *appel*. Forbes and others *resp.* 4 Bli. N. S. 485; in which case it was held that proprietors of fisheries on the sea coast, entitled only by the terms of their grant to fish with a net and coble, cannot be restrained from fishing with stake nets on the suit of owners of fisheries in a river.

(*n*) Some of the books seem to extend the term *free fishery* to public rivers, though not arms of the sea; see 2 Bl. Com. 39; per Lord Mansfield in *Carter v. Murcot*, 4 Burr. 2164; per Holt, C. J. in *Warren v. Matthews*, 1 Salk. 357.

(*o*) *River Bann* case, Sir John Davis's Rep. 55.

(*p*) The right must be clearly proved, and cannot be presumed; *Carter v. Murcot*, *ubi sup*.

In a late case where the lord claimed the exclusive privilege of cutting seaweed (*vraic*) from rocks covered at ordinary tides by the sea, and which right, in the absence of any grant from the crown, could only be sustained by evidence of long and undisturbed enjoyment, the evidence being of a continued adverse claim without resistance, followed up by suit, the court of appeal (Privy Council) set aside the judgment in favour of the lord; *Benest v. Papon*, 1 Knapp. (P. C.) 60.

(*q*) 2 Bl. Com. 39.

(*r*) See the case of *Weld v. Hornby*, 7 East, 195. Vide also *Blundell v. Catterall*, *ubi sup*.

(*s*) 2 Bl. Com. 39, 417; 1 Campb. 312, n.

(*t*) 2 Bl. Com. 39; and see *Kitch.* 46, cites 17 Ed. 4, 6; *ib.* 47, cites 22 Ed. 4, 116.

(*u*) *Kitch.* 46, cites 4 Ed. 3; *Trespass*, 222; 7 Hen. 7, 13; 18 Ed. 4, 5.

(*x*) See 1 Chit. G. P. 224. Free fishery held to import an exclusive right equally with a *several* piscary; *Smith v. Kemp*, Salk. 637; S. C. Carth. 285.

Common of piscary may be prescribed for as appendant to land; *Kitch.* 46.

others have slighted these distinctions, and considered a free fishery merely as a liberty to fish in the *several* fishery of the grantor (y), and to be synonymous with *common* of piscary (z); and others again have denied the ownership of the soil is necessarily included in a *several* fishery (a). These conflicting opinions are ably digested by Mr. Hargrave in his learned note above referred to, but that very distinguished lawyer thought proper to leave the question open to future discussion. It would seem, however, to be settled, that a fishery in a navigable river, described in an ancient grant "*separalem piscariam*," is an incorporeal and not a territorial hereditament; but that where the terms of the grant are unknown, the owner of a *several* fishery would be presumed to be owner of the soil (b). And the case of *The King v. Ellis* (c) shows, that particular privileges in the grantee are inconsistent with a mere incorporeal fishery.

It was decided in the case of *Scratton v. Brown* (d), that a grant by the lord of a manor, (possessing the franchise of a fishery,) of a messuage, &c. and certain sea-grounds, *oyster layings, shores, and fisheries, with full and free liberty to fish, dredge, and lay oysters thereon*, did not convey a mere privilege and easement only, leaving in the grantor the general property in the soil, but the soil itself, and that the operation of the words "sea grounds" was not qualified and restricted by the superadded words "oyster layings," "liberty to fish," &c.

The grant in the last-mentioned case described the sea grounds, &c. to be bounded by the *high and low water marks*; and the Court of B. R. held, that those words were to be construed with reference to the rule of common law upon the subject of accretion (e); and that as

(y) 2 Sid. 8, cited 2 Bl. Com. 40.

(z) See 2 Bl. Com. 40; *Upton v. Dawkin*, 3 Mod. 97; *Comb. 11*; *Peak v. Tucker*, cited *Carth. 286*, marg.; but see *Salk. 637*.

(a) *Co. Litt. 122 a*; *Bract. f. 208 b*. And see Mr. Hargrave's note [7] to *Co. Litt. 122 b*. Where a person exercising the right of fishing in the river Severn, between certain limits within a manor bordering on the river, under a grant from the crown, also exercised the privilege of landing nets on the beach, and driving stakes, the Court of King's Bench considered that some territorial right passed by the grant, and that the party was therefore rateable under 43 Eliz., but expressed a clear opinion that a mere incorporeal fishery was not within that statute; *The King v. Ellis*, 1 Mau. & Selw. 652.

(b) *The Duke of Somerset v. Fogwell*, 5 Barn. & Cress. 875.

(c) *Sup. n. (a)*.

(d) 4 Barn. & Cress. 485.

(e) This case is therefore confirmatory of the decision of *The King v. Lord Yarborough*, 3 Barn. & Cress. 91, 4 Dow. & Ry. 790, ante, pt. 1, pp. 32, 33, that land gradually and imperceptibly added to the demesnes of a manor by the alluvion of ooze, sand, &c. belongs to the lord, and not to the king, and so is distinguishable from the case of large spaces of land left by the sudden retirement of the sea; and from that of the land of a subject rendered undistinguishable from the foreshore by the gradual encroachment of the sea; *Hull and Selby Railway*, in re, 5 Mee. & Wel. (Eq.) 327.

It was held, in *Perrott v. Bryant*, 2 You.

the high and low water marks shift, the property conveyed also shifts, for that land between high and low water marks can only vest in a subject as the grantee of the crown, and that the crown by a grant of the sea shore would convey, not that which at the time of the grant was between the high and low water marks, but that which from time to time should lie between those two *termini*.

It has been adjudged that every subject may fish in navigable rivers, the king's prerogative right being confined to whale and sturgeon (*f*); and that the rule extends even to arms of the sea (*g*), unless an exclusive right exists by prescription (*h*).

The reader is reminded that in the case of *The Mayor & Commonalty of Orford v. Richardson*, Lord *Kenyon* (the other three judges of the Court of B. R. concurring) held, that there may be a prescriptive right in a subject to a *several* fishery in an arm of the sea (*i*); and that in the case of *Rogers v. Allen* (*k*), *Heath, J.* held, that a several fishery in a navigable river may pass as appurtenant to a manor.

When a river, not navigable, runs between two manors, and is the meer and boundary of the manors, each lord has a moiety of the river and fishery (*l*).

And when no manorial franchise is claimed in an inland river, not navigable, the right of fishery is in the proprietors of the land on either side, as owners of the soil or bed of the river, and generally extends *ad filum medium aquæ* (*m*).

The franchise of free chase, free warren, and free fishery may, the author apprehends, like other franchises, be lost by non-user or

& Coll. 61, (which was a suit against boat-owners for tithe of oysters,) that the circumstance that property situate on the sea shore, between a sea side town and the sea, had not been assessed to the poor rates of the parish in which the town was situate, was very slender evidence of the property not being within the parish.

(*f*) Ante, p. 653, n. (*n*); and see stat. 17 Ed. 2, c. 11, *de prerogativâ regis*.

(*g*) *Warren v. Matthews*, 6 Mod. 73; S. C. 1 Salk. 357; Anon. 1 Mod. 105; ante, p. 664.

(*h*) *Carter v. Murcot*, 4 Burr. 2162; 4 T. R. 439, in *The Mayor, &c. of Orford v. Richardson*; and see *Bagott v. Orr*, 2 Bos. & Pul. 472. In the case of *Chad & Tilsed*, 2 Brod. & Bing. 406, (ante, p. 785,) *Dallas, C. J.*, observed, that "if the usage had been only of forty years' dura-

tion, and had been applied to establish an exclusive right over an arm of the sea, that could not destroy the right of the subject."

In the case of *Williams v. Wilcox*, 8 Adol. & El. 314, it was held that the paramount right of the subject to navigate public rivers extends over every part thereof; that prior to Magna Charta the crown had no power to make a valid grant in derogation of such public right, but that the 4 sect. of 25 Ed. 3, c. 4, rendered legal all *weirs* erected prior to Ed. 1.

(*i*) 4 T. R. 439; Hargr. Tr. 19.

(*k*) 1 Campb. 312; see this case on a point of evidence, ante, pt. 1, p. 505.

(*l*) *Davis's Rep.* 155; 1 Mau. & Selw. 661, in *The King v. Ellis*.

(*m*) *Carter v. Murcot*, ubi sup.; and see *Davis's Rep.* 155.

abuser, as well as by surrender to the crown (*n*); but we have seen that minor prescriptive rights exercisable by the lord of a manor will continue, notwithstanding the Court Baron should be lost (*o*).

(*n*) Cro. Jac. 155; 12 Mod. 271; 1 Chit. G. P. 224. And see as to misuser, ante, p. 660. But the misuser of one of several franchises, not dependent on each other, is not a forfeiture of the whole, but

of the one only which has been misused; *contra*, if the one is wholly dependent on the others; Br. Franchises, pl. 14.

(*o*) Ante, pt. 1, p. 6.

CHAPTER XXII.

OF THE JURISDICTION OF COURTS LEET.

SECTION I.

Origin and Nature of the Court Leet.

THE Leet, which is a court of record (a), is described as one of the most ancient tribunals noticed by our common law (b), and is accounted the King's Court; for although this franchise is frequently held by the lord of a hundred or manor under a grant from the crown, or by prescription which presupposes such grant (c), yet the lord is intitled only to the profits of the court (d), and (in legal phraseology) the day is to the king (e).

The court leet is by some writers said to be derived out of the sheriff's *tourn* (f); but the observation may, the author thinks, be considered as a mere *obiter dictum*, as far, at least, as it may tend to impugn the opinion of many of our ancient law authorities, that the jurisdiction and privileges of the leet were purchased of the crown by thanes or barons and others of large territorial possessions, in order that the people might have justice rendered to them nearer to their own homes; and whereby the author conceives the power of the sheriff in his *tourn* was superseded, or at least suspended to the extent of the local confines of each particular grant.

The close resemblance which the leet jurisdiction bears to the Anglo-Saxon institutions, beginning with Ethelbert in 561 (g), would

(a) Br. tit. Leet and Tourn, pl. 39; F. N. B. 82; 2 Inst. 143; 4 Inst. 263; Kitch. 82; Hett. 62; 4 Bl. Com. 272.

(b) 7 Hen. 6, 12; 2 Inst. 70; 3 Burr. 1860. And it is said to have been ordained by King Alfred, *Mirr. c. 1, s. 3*; *Bullen v. Godfrey*, 1 Roll. Rep. 73. Judge Jenkins, in his *Pacis Consultum*, written during the Commonwealth, states (p. 1), that the court leet was established long before the Conquest. And see Rits. on Courts Leet, 34.

(c) 2 Inst. 72; Finch's Law, 246; F. N. B. 160, 161, and the notes; Co. Cop. s. 31, Tr. 51.

(d) 41 Ed. 3, 26; Br. Leet; 4 Kitch. 82. The lord of a leet cannot claim the wastes by prescription, which may belong to one who has a manor without a leet. See 9 Hen. 6, 44, cited Br. Leet, 2.

(e) 41 Ed. 3, 26; 44 Ed. 3, 19; Br. Leet, pl. 4, 5; Kitch. 82; 2 Inst. 140; Co. Litt. 117 b.

(f) 4 Inst. 261; Crompt. 230 b; Shepp. Court Keeper's Guide, 4.

(g) The author submits that the remedial, if not the alleged legislative character of the ancient court leet may be traced even to the continental Saxon institutions. The *gaugrave* held his *gauding* or moot

seem fully to justify the opinion formed of its great antiquity; but the author does not find that the term *leet* is mentioned in any historical work illustrative of the Anglo-Saxon jurisprudence.

The generic character of the leet jurisdiction may perhaps be best illustrated by a reference to the territorial divisions, and to the several independent communities established by the Anglo-Saxon kings, and by a brief sketch of the different ranks of people, and the mode of administering justice at that period of our history.

It is supposed that the Anglo-Saxon monarchs divided their territories into shires or counties, and townships, in imitation of their continental subdivisions called by the Romans *pagi et vici*, as such divisions are frequently mentioned by historians before the end of the heptarchy (*h*); and it seems equally probable that King Alfred, who has the credit of that great and judicial polity, was not in fact the first to introduce the division of the kingdom into counties; but our historians certainly appear to be agreed that he made a new and more regular division of it, different from that which subsisted under the heptarchy, and probably introduced the subdivisions of shires or counties into *trithings*, or *laths*, or *rapes* (*i*); and without doubt he has the merit of the still further subdivision of *trithings* into *hundreds*, and of each hundred into *decenaries*, *tithings* or districts, consisting of about ten families (*k*).

The lowest orders of the people among the Anglo-Saxons were complete slaves either by birth, or by forfeiture of their freedom by crimes or breach of faith, and were incapable of any office of trust or honour; but the introduction of Christianity led to frequent manumissions, and established another class of people called *frilazin*, and

every six weeks, and all the tenants within the gau owed suit and service to this court; and presentments were there made by the burmeysters or bailiffs, similar to those of the court leet, of all who neglected to appear at the court, and of bloodshed, assaults, and all other crimes punishable by loss of life or limb. Vide *Speculum Saxonicum*; and also an interesting and erudite article in the *Edinburgh Review* of February, 1822, No. 72, p. 287 et seq.

(*h*) See vol. 3 of Henry's History of Great Britain, p. 311; Hallam's Europe, p. 390.

(*i*) lb. 317; Spelm. Vita Ælfrida, p. 74; St. Amand, Hist. Essay, p. 68. These intermediate divisions between shires and hundreds still subsist in England, the first (i. e. trithings) in the county of York,

where (as is observed by Mr. Justice Blackstone in his Commentaries), by an easy corruption they are denominated ridings; the second (i. e. lathes), in the county of Kent; and the latter (i. e. rapes) in the county of Sussex.

(*k*) The subdivision of the kingdom by our Anglo-Saxon ancestors, and the general character of English jurisprudence at that period, bear a strong affinity to the polity and integral communities of the Scandinavian nations. The *hærad* appears to have been the primary division of their land, analogous to the Anglo-Saxon hundred; and this district was usually subdivided into quarters, and occasionally into tithings. See *Edinburgh Review* of February, 1822, p. 293; Hallam, pp. 406, 407.

persons so made free were considered to be in a middle state only, between slaves and freemen.

Those who were freemen from their birth were called *ceorls*, and constituted a middle class between the nobility, and such labourers and mechanics as were slaves or descended from slaves; and being generally devoted to agriculture, a *ceorl* was the usual name for a husbandman or farmer (*l*); but the acquisition of five or more hydes of land, the attainment of priest's orders, or making three voyages beyond sea in his own ship and with his own cargo (*m*), advanced a *ceorl* to the dignity of a thane; and his degree of nobility was considered to be higher than the next description of thane noticed.

A *ceorl* who had a propensity to arms often became the attendant of some warlike earl, and was called his *huscarle*; and by obtaining a reward from his patron in land or warlike habiliments was likewise considered as a thane, and this was the lowest degree of nobility. The higher class of thanes were denominated kings' thanes, and appear to have been of three different degrees (*n*).

The thanes were the only nobility among the Anglo-Saxons; but the princes or members of the royal families were of a still superior rank.

With respect to the Anglo-Saxon jurisprudence, it should be premised that the kings were considered as the chief judges in their respective territories, and frequently administered justice in person. Alfred the Great, we are told, sometimes employed both day and night in hearing causes on appeal, with the aid of learned men acting as assessors, and forming a supreme court of justice. But after the establishment of monarchy, it was found to be necessary to appoint a chief justiciary to preside in the king's court in his absence; and the first institution of that office is supposed to have been at the time of the incursion of the Danes.

The supreme tribunal of our Anglo-Saxon ancestors was the *WITTENA-GEMOT* (*o*); which was not only a court of civil and criminal jurisdiction, but all the affairs of state, political and ecclesiastical, were there debated and regulated (*p*).

The ordinary assembly of the members of this court appears to have been at the festivals of Easter, Whitsuntide and Christmas, it

(*l*) Hallam, pp. 383, 384.

(*m*) Henry's History of Great Britain, vol. 3, p. 325; St. Amand, p. 73.

(*n*) Hallam, p. 413.

(*o*) *Wittena-gemot*, or assembly of wise men; Wilk. L. Sax. pp. 14, 72, 76—79, 102, &c.; Spelm. Gloss. in voc. Hist.

Eliens. c. 10; Henry's History of Great Britain, vol. 3, p. 372; Turn. Hist. of the Anglo-Saxons, pp. 220, 261; Hallam, p. 388.

(*p*) Henry's History of Great Britain, vol. 3, p. 369.

being the prerogative of the king to appoint the time and place of their meetings; but on very solemn and important occasions all the constituent members were summoned, who being numerous, and the persons interested in their debates being still more so, the wittenagemot was frequently held in the open air on some extensive plain (*q*), and on the banks of a river near a large town for the benefit of water and provisions (*r*); and often under a large tree for the convenience of shade and shelter (*s*).

The next court in point of importance of Anglo-Saxon institution was the SHIRE-GEMOT, which was for the trial of both criminal and civil causes; and here transmissions of real property were recorded, and ecclesiastical affairs transacted (*t*). The Shire-gemot was held in each county twice in every year, viz. in the spring and autumn; and was attended by the bishop and clergy of the diocese, the *alderman* (*u*) of the shire, the *shiregrieve* (*x*), law-men, magistrates and thanes (*y*).

(*q*) 1 Tyrr. Hist. Engl. Introd. civ. cv.; Camd. Brit. Isle of Man; Spelm. Gloss. voc. Mallobergium; Eadmer. 9, and Seld. Spicileg. 197; Lamb. Preamb. Kent, pp. 441, 443, tit. Eareth. Mr. Watkins, in his 2nd vol. on Copyholds, p. 10, notices that the Welch and Irish, and other ancient nations held also their courts of justice in the open air, and generally on the slope of a hill; and adds, "Indeed, so prevalent was this custom among the Britons, that the top of a hill or eminence became at length significative of a court of justice; and the names of several persons who had jurisdiction were allusive to it;" (cites Owen's Welch Dict. voc. Bre, Brezyn, Breyr, Crug, &c). "And vestiges of this custom remain among us to this day in the *Moot* or *Mute*, or *Parling Hills*, still known in various parts of this and the neighbouring islands;" (cites Spelm. Gloss v. Mallobergium, and Whit. Manch. b. 1, c. 8).

(*r*) 3 Henry's Hist. of Great Britain, p. 373. For the names of the places where the Wittenagemots met, see Hody's Hist. of Convocations referred to, ib.

(*s*) Edda. Fab. viii. North. Antiq. vol. 2, p. 53 n. (A.); 1 Tyrr. Hist. Engl. 160; Transl. Mall. vol. 2, p. 56. And see 2 Watk. on Cop. pp. 9—16; Kennet's Paroc. Antiq. Glos. v. Franciplegium.

(*t*) Vide Turner's Hist. of Anglo-Sax., pp. 192, 261. There is a remarkable

affinity to the Anglo-Saxon shire-govemment in the constitution of the Norman Isles. See the excellent article in the Edinburgh Review of February, 1822, already referred to. Vide also Hallam, p. 589, (citing Gardon on Court Baron).

(*u*) The earldorman (or alderman), or as he was called in the Danish times, the earl of a shire or county, was a person of the highest dignity and greatest power among the Anglo-Saxons, and this magisterial office was generally enjoyed by the thanes of the largest estates and most ancient families. Henry's Hist. of Great Britain, vol. 3, p. 342.

(*x*) The *shiregrieve* was an officer appointed in every shire inferior in dignity to the alderman, and who acted as his assessor and chief minister when present, and supplied his place when absent. Henry's Hist. of Great Britain, vol. 3, p. 344.

(*y*) It seems to have been the royal prerogative both before and after the establishment of monarchy to appoint the aldermen, shiregrievs, domesmen, and other civil and military officers, but this power was at length vested in the wittenagemot. Henry's History of Great Britain, vol. 3, p. 361; or in the shiregemot, see ib., p. 343. It has been doubted whether in the earlier Saxon times the alderman was appointed by the king. See Norton's Historical Account of London, pp. 327, 328.

The court, after a discourse from the bishop on their relative duties as Christians, and from the alderman or one of his assessors on the laws of the land and the duties of good subjects and citizens, proceeded to try, first, the causes of the church, next the pleas of the crown, and lastly the controversies of private parties (2). The decision on evidence of facts appears to have been by the votes of the whole assembly collected by the law-men, who, when any question of law arose, answered it by the dome-boc or law-book (a).

The shire-gemot often continued for several days without finishing the whole of its business ; so that another court called a *county court* was directed to be held by the shiregerieve, from four weeks to four weeks, to determine the causes left undecided at the shire-gemot (b).

It was originally the province of this subordinate or county court to hold also an inquest or view of frank-pledge (c), to see that every person above twelve years of age was in some tything or decennary, and had taken the oath of allegiance, and found security to the king for his good demeanor.

Dr. Sullivan in his Lectures on the Laws of England (d) observes, that " since the time of King Edgar, at least, this court has been divided into two ; the criminal matters, both ecclesiastical and civil, and also the view of frank-pledge, were dispatched in one court called the *tourn*, that is, the *circuit*, from the bishop and sheriff's going circuit through the country ; and the civil business was dispatched in another, called the *county court*. The law was, that the sheriff and bishop should twice in the year (e) go their circuit or tourn, namely, in the month following Easter, and the month following Michaelmas, and

(2) 3 Henry's History of Great Britain, p. 348.

(a) It appears that independent of the wittena-gemot and shire-gemot courts, a special general *placitum* or plea of land was frequently held in different parts of England, as might best suit the parties in the cause. Turner in his History of the Anglo-Saxons (pp. 193, &c. 264), has selected several cases of the kind from ancient documents ; one in which a *general placitum* was held first at London, and in a few days after at Northampton, and subsequently, on the death of one of the parties, at Walmesford, in eight hundreds ; and another in which a "*great placitum* of the citizens and hundreds" was held at Cambridge.

A great gemot or general placitum was sometimes convened from eight hundreds,

and sometimes from three ; 3 Gale, 469, 473, cited Turn. Hist. of the Anglo-Saxons, 262 ; who also notices that by the laws of Canute it was ordered that there should be two shiregemots and three burgh-gemots every year, and that the bishop and earldorman should attend then, for which is cited Wilk. p. 136.

(b) These subordinate county courts appear sometimes to have been called *folckmotes* ; and the shiregerieve, the law-men and the parties and their witnesses in the causes to be tried were alone obliged to attend them. See further as to *folckmotes*, post, p. 675.

(c) See further as to this subject, post, p. 682 et seq. ; Hallam, 407.

(d) P. 269.

(e) See Powell on Courts Leet, p. 13.

should hold their court in every hundred of the county; but *the view of frank-pledge* was to be taken only once a-year, namely, the tourn after Easter. But for the more ready dispatching civil causes, the county court was held once a month, that is, in twenty-eight days, reckoning a month by four weeks, and not by the calendar."

There would appear to have been several courts of judicature established on the subdivision of shires or counties, possessing a similar jurisdiction to the shire-gemot, but which were nevertheless subordinate to it, each court in its order of superiority having an appellant jurisdiction.

The one which was next in importance to the shire-gemot, the author apprehends, was the *trithing court*, in which the *trithing man* or *lathgerieve*, who was the next magistrate below the *alderman*, and above the *hundredary*, presided; and this court was composed of the members of about three or four hundreds within that division of the county which was called a *trithing*, *lath* or *rape* (*f*).

This court is stated by our chroniclers to have been discontinued at an earlier period than those the author is about to mention, and to have left but few vestiges behind it (*g*).

The next court in order of superiority was the *hundred court*, and this had jurisdiction over ten tithings, or that division of a county which was termed a *hundred*; and the presiding magistrate at this court was called the *hundredary*, who was generally a thane residing within the hundred, and elected to the office (considered to be both honourable and lucrative) by the other members (*h*).

This court usually met once every month, and all the members, in imitation of their German ancestors, appeared in their arms (*i*), it being a custom, at the opening of every meeting, for each of the members to touch the hundredary's spear with his own, in token of their submission to his authority, and of their readiness to fight under his command (*k*).

The archdeacon, and sometimes the bishop, presided in this court with the hundredary, and it should seem that the court had no power to condemn any person to death or slavery (*l*).

(*f*) Ante, p. 670, n. (*i*).

(*g*) 3 Henry's Hist. of G. B. p. 342.

(*h*) 3 Henry's Hist. of G. B. p. 339.

(*i*) And this obtained for it the name of the *Wapentac*.

(*k*) 3 Henry's Hist. of G. B. p. 340, cites Wilk. Leg. Sax. 203.

(*l*) 3 Henry's Hist. of G. B. p. 340, who also states that the proceedings of this court were summary, and that all

questions were determined by the votes of the members collected by the hundredary, who could only pronounce the sentences.

The Anglo-Saxon hundred court seems to have survived the trithing court, and to have been discontinued in the reign of Edward the Third; but there are hundred courts existing at this day, possessing both civil and criminal jurisdiction, under the title of courts baron and courts leet, and

The chief court in cities and towns appears to have resembled the hundred court (*m*), and to have been called the *burgemote*, or *folc-gemot*, [*or folckmote*,] and was composed of all the burgesses (*n*), the presiding magistrate being called the *alderman* or *towngerieve*, and in sea-ports, the *portgerieve* (*o*). This court was held monthly, and on particular emergencies the chief magistrate had authority to convene special meetings by the sound of the *mot-bell* (*p*).

We have already seen that each hundred division was again divided into ten tithings, each tithing consisting of about ten families. One of the most respectable members of each tithing was elected the chief magistrate, and was sometimes called the *alderman* or *freeburgh*, but more commonly *borsholder* or *tithingman* (*q*).

which probably were granted to barons and others of great rank on the decline of the Saxon jurisprudence. And hence, the author apprehends, the *baron's mote* or *moot court*, as distinguishable from the court baron incident to every manor, and which latter court, as we have seen, is not a court of record. Ante, pp. 600, 601.

There are, however, hundred courts, without the appendage of a leet franchise, and then they are merely courts baron; the freeholders being the only suitors, and being also judges of the court.

(*m*) The ward inquest in the city of London seems to correspond with the leet of the hundred.

Lord Coke observes that the wardmote in the city of London is derived from ward and mote, that is, the ward court, and adds, "In London the parishes are as towns, and the wards are as hundreds;" 4 Inst. 249; and see Norton's Historical Account of London, p. 77.

No notice is taken in Domesday-book of the county court, or the hundred court, nor does it contain positive evidence of a popular magistracy in ancient burghs; but this may be accounted for by the circumstance of the leet jury being a common law right belonging to all burghs, and to towns and manors held in ancient demesne, constituting independent communities. See the article in the Edinburgh Review referred to, ante, p. 670, n. (*k*).

(*n*) Mr. Serjt. Merewether in his very learned and interesting report of the West

Looe case, has urged with great ability, that "burgess" and "inhabitant" are synonymous terms. But see per Bayley, J., 3 Barn. & Cress. 686, 687, in Rex v. Mayor, &c. of West Looe; vide also post, p. 686, n. (*g*).

(*o*) In sea-ports and haven-towns, the court resembling the hundred court was called the *portmote* or portmoot court, *curia portus*. 4 Inst. 148. See the introduction to the report of the West Looe case above referred to, in which Mr. Serjt. Merewether observes, (p. 39, n. b.) "Port did not in the Saxon times mean, according to its modern acceptation, only a sea-port, or a haven, but also, generally, any town."

(*p*) Wilk. Leg. Sax. p. 204, "Folc-gemots were ordered not to be held on a Sunday; and if any one disturbed them by a drawn weapon, he had to pay a wite of one hundred and twenty shillings to the ealdorman." Turner's Hist. of the Anglo-Sax. p. 264, cites Wilk. 42. Vide post, p. 682, as to the leets of borough and great towns.

(*q*) From the Saxon word *borh*, a surety, and *alder*, a head or chief; Spelm. Gloss. p. 86.

Lord Coke says "of burghs some be incorporate and some not; and some be walled and some not. It was in former times taken for those companies of ten families, which were one another's pledge, and therefore a pledge is in the Saxon tongue *borhoe*, whereof some take it that

An assemblage of the tithing, with this magistrate at their head, constituted a court of justice; and it was the duty of the borsholder or tithingman to convene the members of his tithing, and to put their sentences into execution; and if not submitted to, the cause was referred, by way of appeal, to the next superior court.

Besides the hearing and determination of controversies arising among the decennaries, it was customary at the tithing courts for each member to produce his warlike habiliments to be inspected; and at these courts new members were admitted, and testimonials given to those who had occasion to remove into other tithings (*r*).

The subdivision of each hundred into tithings or decennaries was admirably adapted for the preservation of the peace and good order of society; for it appears that all the members of each decennary or neighbourhood, (as it was sometimes called,) and who were of the same rank (*s*), were pledges or sureties for the good behaviour and probity of each other; so that if any member committed a crime, the tithing or decennary by which he was pledged, were within one and thirty days to bring him forth, to answer for the offence; and on failure of so doing, they were compelled to pay the mulct prescribed by the law for the crime committed, unless indeed they could prove on oath before a magistrate, that none of the members were accomplices in the crime, and also engaged to bring the offender to justice as soon as they could apprehend him. So again if any member sustained an injury or loss, the rest contributed to redress or repair it; and in case of gross misconduct, the offender was expelled the decennary, and became an outlaw and vagabond (*t*).

In further support of this admirable system of police, (and upon patriarchal principles,) the head of every family was under a heavy

a burgh came; whereof also commeth headborough or borowhead, *capitalis plegius*, or chiefe pledge, viz. the chiefe man of the borhoe whom *Bracton* calleth *frith-burgus*; and hereof also commeth burgbote, which as *Fleta* saith, signifieth *quietantiam reparationis murorum civitatis aut burgi*."

"Every city is a burgh, but every burgh is not a city;" Co. Litt. 109 a.

The office of *constable*, at the present day, seems to correspond with that of *borsholder* in the Saxon æra; for the terms *tythingman* and *borsholder* are frequently used in modern statutes as synonymous with *constable* and *head-borough*. Sometimes where two constables are chosen at

a court leet for a particular township or parish, another officer is elected for the same precinct, called a *third-borough*, who acts as an assistant constable.

(*r*) 3 Henry's Hist. of G. B. p. 334, 335.

(*s*) Thanes were not members of any tithing, the family of each thane being considered as a separate tithing, and he himself responsible for all the members.

(*t*) 3 Henry's Hist. of G. B. p. 337. The members of a decennary were sometimes called *deciners* or *desiners*. The term *dixein* we also find used by some of our ancient law authors. See *Mirr.* c. 1, s. 17. Hence, probably, by a misprint or corruption, the term *doxiners* and *dosexin*.

responsibility, and had great authority over all the members of his family; and became also responsible for the good conduct of every stranger staying with him for three days and nights.

During the Anglo-Saxon æra, the sovereignty and the police of the country were still further maintained by an obligation imposed on every person above the age of twelve years, (with, perhaps, all or some of the exceptions the author will presently mention, in tracing the similarity of the leet jurisdiction and the Anglo-Saxon toun, to swear allegiance to the king, and submission to the laws, before his countrymen in the hundred court or folc-gemot (u), on pain of an imprisonment, after which he became law-worthy, or a *legalis homo*; and this, as we have already seen, was inquired of in the division of the subordinate shire-gemot or county court, termed the inquest or view of frank-pledge (x).

It may be difficult to determine at what particular period the court leet was established as an appendant juridical franchise, and whether before or after the discontinuance of the Anglo-Saxon tithing and hundred courts.

And although the appendancy of the court leet to a hundred or manor, may be thought to furnish evidence of its being of feudal origin, yet if it be true that the word leet is of Saxon derivation (y), the affirmance of the existence of the court, as an appendant franchise, even before the conquest (z), is greatly strengthened; and it may be proper to notice, that the tenure of land in England in the Anglo-Saxon æra, is very far from supplying an argument unfavourable to the supposed appendancy of the franchise to a hundred or manor at that period, as it appears that the Saxon tenure bore a strong affinity to the free socage tenure existing in England at the present day; for the Saxon lands in general were allodial, but subject to military ser-

(u) 2 Inst. 70.

(x) Sulliv. 269; ante, p. 673.

(y) Lord Coke informs us that *lep*, *leth* or *leet* is a Saxon word, and cometh of the verb *ȝelapian* or *ȝeleþian* (*ȝ* being added *euphonia gratiâ*); i. *convenire*, to assemble together, *unde conventus*; 4 Inst. 261. It is also said to be derived from the Saxon word *læt*, signifying *censura*, *arbitrium*, "because this court redressed wrongs by way of judgment against any person of the frank-pledge, who had done any wrong or injury to another." *Lex Man.* 131. And again it is supposed to be derived from the Saxon *leob*, *plebs*,

and to mean the *populi curia* or folk-mote. See *Ritson on Court Leet*, in the introduction. It rather appears to the author, however, to be derived of the Saxon word *leþ*, to assign (or grant), being a juridical franchise held by a subject under a grant from the crown.

(z) See *Ritson on Courts Leet*, 4; per Lord Mansfield, 3 Burr. 1860; ante, p. 669. And we are told that the earls of each county, and the *lords of each leet*, and likewise representatives of towns, chosen by the burgesses of the town, were summoned to the Wittena-gemot. See *Lamb. Arch.* 239, cited 2 Bac. Abr. p. 94.

vices; and were not only descendible (a), but alienable at the pleasure of the owner, and devisable.

In taking leave of the judicial polity of our Anglo-Saxon ancestors, and previously to entering on an inquiry into the constitution and authority of the court leet, as it appears to have existed from the period of the Norman conquest, it should be mentioned that the Wittena-gemot court, and those the author has noticed of a subordinate jurisdiction, would seem to have been continued for a considerable time after the conquest; but William the Conqueror becoming jealous of the legislative functions of this assembly, established a constant court in his own hall (b), thence called *aula regia*, or *aula regis* (c). This court was composed of the officers of the king's palace, of which the justiciar (*capitalis justiciarius totius Angliæ*) was the president; and who was also the principal minister of state.

The *aula regis* removed with the king from one part of the kingdom to another; and all matters both civil and criminal, and regarding the revenue, were transacted there (d).

In some cases of very great importance, as upon the levying of war, or raising an escuage, it was customary to summon to the *aula*

(a) The descent of Saxon lands was to all the sons equally, as gavelkind lands in Kent, which seems to be a customary relic of Saxon law, and, like gavelkind lands, they were not forfeitable for felony; Sulliv. 278.

(b) *Aula*, *halla*, or *hauia*, a hall or chief mansion house, was the usual appendage of a manor; Domesd. tom. i. 21 b; ib. 285 b; ib. 286 b; ib. 12, 293, 307 b, 308; ib. 368 b; ib. 63; ib. 309; ib. 29 b; ib. 32 b. So *caput manerii*, 1 vol. 11, 26, 166; 2 vol. 227, 293 b; see App. to 2nd Gen. Rep. of the Comm. of Pub. Rec. p. 441. So the term *hall* is sometimes applied to a court baron; and hence also the *town-hall*, *shire-hall*, &c.; 2 Watk. on Cop. 18. Hence too the Hallmote courts in the city of London; 4 Inst. 249.

In Yardley Hastings in Northamptonshire, and many other places, the manor court is opened in an ancient hall, and then, from its dilapidated state, adjourned to some inn, or other convenient place within the manor.

(c) According to Sullivan, this court existed even in the Saxon times, under the term *curia regis*; see his Lect. on the

Laws of England, p. 271. And the author apprehends that the Wittena-gemot was a branch of this court; see Norton's Hist. Acc. of London, pp. 343, 344.

(d) The latter were heard in the Treasury, called the Exchequer from the chequered cloth wherewith that table was covered; but all criminal matters were heard only in the hall; the civil pleas were heard in either court. This was the sovereign court of the kingdom (Mad. c. 8), where justice was administered by the king himself and his officers, consisting of the *justiciar*, the chancellor, (who formed all patents, and had the custody of the seal both for writs and patents,) the *treasurer* or *auditor*, (who presided in matters relating to the revenue,) the *constable* and *marshal*, (who determined all matters of war and peace, according to the law of nations and of arms,) the *seneschal* or *steward* and *marshal*, (who determined all quarrels between the king's menial servants, and had the charge of the prisoners, and the controul of the king's household,) and the *chamberlain*, (who had the charge of the king's money issued out of the treasury).

regis those who held of the king *in capite*; and this is considered to have been the foundation of the English parliament, as far as regards the jurisdiction of the Upper House; but whether the Commons of England made part of that assembly, or at what period the Lower House was instituted on its present representative system, does not clearly appear (*e*); the more general opinion however is, that *barones majores* (*f*) were alone summoned to the *curia regis*, and that the *barones minores* first sat by representation in the reign of Henry III. (*g*), the overwhelming influence of the greater barons inducing the institution of this popular assembly (*h*).

And it is generally supposed that about this period, or as some say about the 23 Edward I., the crown was induced, as a further check to the power of the barons, to create a certain number of free boroughs (*i*), conferring the privilege of returning two of their burgesses to share with the knights of the shire the legislative powers of the third estate of the high court of parliament. It is observable, however, that these grants were quite distinct from charters of incorporation, which came into use about the reign of Henry the Fifth, and in some of which, particularly those granted after the reign of

(*e*) The Commons of England certainly appear to have formed part of the *Witena-gemot* courts, or parliamentary assemblies, in the Saxon era. And it is a natural conclusion that the parliament is not a feudal institution, but has resulted from the concentration of the remedial and judicial authorities of the kingdom. Ante, p. 677, n. (*z*).

(*f*) Ante, p. 600, n. (*a*).

(*g*) Brady's Answer to Petit, 133; Camd. Britt. 13; Dugd. Orig. Jur. 18; but see 4 Inst. 2, where Lord Coke says that Lords and Commons of ancient times sat together, and refers to Rot. Parl. 5 Ed. 3, nu. 3.

And it is by no means improbable, that after the greater barons were allowed to alienate their lands in fee, those holding of them by subinfeudation, and termed the *barones minores*, were summoned to convocation for a time, and that these afterwards constituted the knights of the shire, or representatives of counties, in the lower house.

(*h*) Spelm. Gloss. 69; Seld. tit. Hen. 692. Selden does not determine the point, but (p. 704, ib.) says that it was

attempted, 17 John, to bring in the *barones minores*, as appears by the great charter granted by him at Runnymede.

(*i*) Vide Mr. Serjeant Merewether's observation in his preface to the Report of the West Looe case, that it was not in consequence of their being trading towns that the boroughs were summoned to send representatives to parliament, as advocated by Dr. Brady and others, though at an early period of our history burgesses were summoned by special writs for special purposes, as to settle the staple, &c.; and see 2 Pryn. B. P. R. 95 et seq.; 4 Pryn. P. W. 186 et seq. So also port towns, some not being boroughs, and others which were then representative boroughs, were summoned by a writ to send three or four masters of vessels, or others of the town if there were not sufficient masters of vessels, to a council at Westminster, to treat with the king, or with others of his council, upon certain matters relating to the king and his honour, and the defence and preservation of the realm, and the shipping thereof; see the above preface of Mr. Serjeant Merewether, p. 5.

Henry the Sixth, the common law right of voting was altered, and in others not so. But the greater proportion of lay corporations appears to have been created in and subsequently to the reign of Queen Elizabeth.

The power of the justiciar (*k*) and of the barons becoming equally a subject of jealousy with the crown, it was deemed necessary to introduce a new judicial policy, which gave rise to the courts as they now exist in Westminster Hall. And to obtain countenance to this division of the courts, the king himself sat in person in the Court of King's Bench, and hence the power which that court still retains over other jurisdictions, and the idea of the king being always present in it (*l*).

When the courts of Westminster Hall began to draw to themselves the jurisdiction of the courts existing under the Anglo-Saxon jurisprudence, and after this important change in the administration of justice had introduced the offices of *justices errant* or *itinerant* (*m*), *justices of assize* and of *gaol delivery*, and of *the peace*, with the courts of *quarter sessions* (*n*), &c., the jurisdiction of the county court was restrained to pleas of debt under 40*s.*, and all pleas of land were discussed in the higher tribunals; and in course of time the various *mote* or *moot* courts of which we have spoken fell altogether into disuse. Nor was it likely that the leet, so analogous in its juridical character and powers to that branch of the county court which is called the sheriff's tourn, should long survive the shock of this great

(*k*) This power is represented by Sir William Blackstone to have induced King John to consent to that article which forms the 11th chapter of Magna Charta, and enacts that "*communia placita non sequantur curiam regis, sed teneantur in aliquo loco certo*;" 3 Com. p. 39.

(*l*) 2 Bacon Abr. 95.

(*m*) The proceedings of the court of the justices in *Eyre* (in itinere) show that it was in effect nearly the same as the Saxon Shire-gemot. See the MS. formerly belonging to Sir Matthew Hale in Lincoln's Inn Library. Mr. Ritson, in his treatise on courts leet (p. 7, n. u.,) in adverting to the practice among our ancestors of administering justice in the most public manner, and generally, for the convenience of the suitors, in the open air, (see ante, p. 672,) and as a curious illustration of that principle, observes that "the justices itinerant in the time of Ed-

ward the First sat at the Stone-cross, (opposite the Bishop of Worcester's house, now Somerset-place,) in the Strand. This venerable monument, which was even then ancient, (Pat. 4 Edw. 2, pl. 2 m, 15 d,) is mentioned by Stow as standing headless in 1598. The justices probably in bad weather sometimes sat in the bishop's house, as the steward or bailiff of a leet would, for the same reason, occasionally do in the church, where, notwithstanding a canon, (1 Burn. E. L. 361,) it is in many places still held." And in another part (p. 15), the same author observes, "Dr. Hicke thought that justices itinerant were originally instituted by Henry II.; Dis. Epis. pp. 8, 48; but Mr. Madox has produced evidence of their existence in the reign of King Stephen; (Hist. Ex. p. 100)."

(*n*) Vide 1 Ed. 4, c. 2; post, p. 685, n. (*e*).

innovation, and hence may be traced the very mouldering state of that once venerable fabric the *court leet*.

It is clear, however, that the ancient powers of the leet are but little circumscribed by any legislative ordination; on the contrary, that they have been recognized and enlarged by several acts of parliament: the author will now therefore the more unhesitatingly proceed to a further illustration of the constitution, and to an inquiry into the present practice of this relic of Saxon jurisprudence.

Appendency of the Leet (o).

It will necessarily be inferred from the preceding observations on the nature and origin of the court leet, that it may be appendant to a hundred (*p*) or to a manor (*q*). And although there possibly may be instances of leet jurisdictions existing by prescription (*r*) as separate and unappended franchises, yet as the court was instituted under the powerful influence of the ancient thanes or barons, to invest them with precisely the same judicial character as the sheriff in his tourn, and for the ease of their tenantry, (who were thereby excused from attending the tourn, held, perhaps, at some distant part of the hundred (*s*),) it is very possible that such franchises, if any do exist, were originally granted by the crown with reference to some manorial possessions, over which the grantee exercised baronial powers, though the fact is incapable of being established at this far distant period, in the absence of the original grants, and also, perhaps, of the more ancient court rolls.

A leet may also be appendant to a vill, or to an ancient mes-

(*o*) The style of the court is, "The court leet with *view of frank-pledge* of *E. C., Knight, held, &c.*:" and if appendant to a manor and held with the court baron, it may be thus, "The court leet with *view of frank-pledge*, and court baron, of *E. C., Knight*, for the manor of *S., &c.*"

(*p*) And see 8 Hen. 7, 1; Mar. 75; Lord Norris v. Barret, Mo. 426; Lawson v. Hare, 2 Leo. 74; 2 Inst. 122. But Kitch. (p. 78), says that a leet is of necessity incident to a hundred, and cites the above case from the Year Book (8 Hen. 7, 1); and see Br. Leet, 23, citing 13 Hen. 7, 19. Yet it has been held that a leet is not incident to a hundred, *as one liberty cannot be incident to another*, but that a leet may be appendant to a hundred; 12

Hen. 7, 16; Br. Leet, pl. 24; ib. Incidents, pl. 18.

(*q*) 33 Hen. 6, 4; 18 Hen. 6, 11; Br. Incidents, pl. 2, 29; 1 Leo. 218. Where three *coparceners* were seized of a manor in fee, to which a leet was appendant, and the king purchased two parts of the manor, it was adjudged that the leet was still appendant to the third part of the manor; Bendl. 11, pl. 45; 1 And. 26; Dy. 30 b, pl. 209.

(*r*) A title to a leet may clearly be made by prescription only; Co. Litt. 114 b; 2 Inst. 72; ante, p. 669. But it gives no title to the wastes; Br. Leet, 2; ante, p. 669, n. (*d*).

(*s*) Ante, pp. 669, 670.

swage(*t*), but it cannot be prescribed for as an appendant to a church or chapel(*u*).

It frequently happens in chartered boroughs that the corporation are lords of a manor, purchased under a license of mortmain, extending over the precincts of the borough, to which manor a leet jurisdiction is appendant; and in those instances the franchise exactly accords with the leet of a private person.

In other boroughs and large towns which have not received a charter of incorporation, the mayor or bailiff, or other chief municipal officer, is chosen at the court leet appended to the manor of some private lord, whose jurisdiction encompasses the particular borough or town(*x*); and those places may therefore be said to have no other local magistracy than the common law officer of the court leet. And even in some corporate places the common law election of a chief magistrate is still imitated(*y*).

Ancient leets, indeed, were equivalent in all respects to corporate jurisdictions; and all corporations and their powers have been superinduced upon the leet, the capital burgesses in corporate towns corresponding with the members of the leet jury of ancient boroughs(*z*).

When a leet exists in a borough or town, and the powers of the court are exercisable by the mayor, or other chief magisterial officer, and there is no trace of its original institution, it is not devoid of probability that the jurisdiction does not exist under a grant from the crown, as an appendant franchise, but that it is a more immediate vestige of the Anglo-Saxon jurisprudence, the term *leet* now used in the style of the court having, in the adaptation of modern terms to ancient institutions, succeeded to that of *folcmote*(*a*).

When the Court Leet is to be held.

By Magna Charta, c. 35, no sheriff or *his* bailiff shall keep his tourn in the hundred but twice in the year, once after Easter, and again after the feast of Saint Michael(*b*), and *the view of frank-*

(*t*) 18 Hen. 6, 11; Br. Incidents, 29. For it may be presumed that the house is the site of a manor; see *Gittins v. Cowper*, 2 Brownl. 217.

(*u*) 10 Ed. 3, 5; 18 Hen. 6, 11; Fitz. Leet, 8; Br. Incidents, 29; Tyrringham's case, 4 Co. 37 a; 2 Brownl. 200, in *Rowles & Mason*.

(*x*) See post, p. 690, n. (*k*); p. 699.

(*y*) As at Yarmouth and Bridgenorth. Vide also the case of the borough of Holt, (*Rex v. Rowland*), 3 Barn. & Ald. 130;

post, p. 699, n. (*c*); *The King v. The Duke of Beaufort*, 5 Barn. & Adol. 442; post, p. 701.

(*z*) See Mr. Serjeant Merewether's preface to the *West Looe* case already referred to.

(*a*) Ante, p. 675.

(*b*) And by 31 Ed. 3, c. 15, every sheriff shall make his tourn yearly one time within the month after Easter, and another time within the month after Saint Michael; and if held in any other manner

pledge (c) shall be at the feast of Saint Michael, "so that every man may have his liberties which he had or used to have in the time of King Henry our grandfather, or which he hath purchased since;" but this clause of the above statute is to be understood of the leet of the tourn, and not of other leets (d); at least not to such as were granted to private persons previously to that statute; but some think that Magna Charta, so far as regards the time for holding tourns and leets, was introductive of a new law (e).

A leet held by charter must be kept on the day or days mentioned in the charter; and when held by prescription, it is to be kept on such certain day or days as may have been the immemorial usage (f); and a court leet may be held even oftener than twice in the year by prescription (g); and when the established period is a month after some certain feast, it is to be accounted a lunar month, twenty-eight days (h). But the court cannot be held on a Sunday (i).

A court leet, it should seem, may be adjourned, if the business of the particular court require it, and this should be done by three proclamations (k).

it is void; Fitz. Tourn, pl. 2, cites 38 Hen. 6, 7. Vide *Gryffith v. Biddle*, Cro. Car. 275.

(c) Meaning that part of the business of the tourn which related to the taking of sureties; ante, p. 673; Co. Lit. 115 a, n. 10.

(d) 6 Hen. 7, 2; 8 Hen. 7, 1; 24 Hen. 8; 2 Inst. 72, N. 11; Co. Lit. 115 a. And see Br. Leet, 21, 23; 1 Roll. Rep. 201; 2 Leo. 74, per Rhodes, in *Lawson & Hares*; Fitz. Tourne, pl. 2. But there are authorities to the contrary; Kitch. 88. Per Periam, 2 Leo. 75; 2 Hal. Hist. P. C. 71; W. Jones, 290; Dakin's (or Daccon's) case, 2 Saund. 290; S. C. 1 Vent. 107. This was a case in the manor of the mayor, &c. of the city of London, called the King's Manor, in the Borough of Southwark. And see *Rex v. The Lord of the Hundred of Milverton*, 3 Adol. & Ell. 285.

(e) See 2 Hawk. P. C. 56, where it is said, "it seems that no court leet granted since the statute can be holden at any other time than what is limited by it, because every such court is derived out of the tourn;" Co. Lit. 115 a, n. 12. But

as to the reason given in Hawk. see ante, p. 669.

Whether there is any distinction in this respect between leets claimed by grant and those claimed by prescription, see *Porter v. Gray*, Cro. Eliz. 245. And note that "the king hath power to make and create a leet anew where none was before;" 1 Brownl. 36.

(f) 2 Inst. 72; Kitch. 88; Br. Leet, 32; *Rex v. The Lord of the Hundred of Milverton*, ubi sup. And once or twice a year on reasonable warning, if a court have been kept at uncertain times; 2 Inst. 72. But it would be better to follow the example of the leet of the tourn, and to hold it after Michaelmas, and within a month; vide sup.

(g) *Edwards v. Hughs*, Gilb. Eq. Rep. 209; 8 Mod. 297; *Morgan's case*, 1 Roll. Rep. 201; *Partridge's case*, 2 Leo. 28, 75; W. Jones, 290; *The Queen v. Jennings*, 11 Mod. 228; Keilw. 148; Gilb. Ex. Rep. 209; Co. Lit. 115 a. But see 4 Bl. Com. 273, citing *Mirror*, c. 1, s. 10.

(h) Cro. Jac. 167.

(i) 2 Saund. 291; 1 Vent. 107.

(k) *Scroggs*, 26. And see Kitch. 11.

Where to be held, and of the proper Notice.

The leet of the tourn, or sheriff's frank-pledge, is by the statute of Magna Charta, c. 35, to be kept *in certo loco ac determinato* within the precinct (*l*); but it should seem that courts leet of lords of hundreds or manors may be held in any place within the precinct where the lord shall please (*m*), and they are sometimes held in the church or chapel. There is, however, a canon prohibiting the keeping of temporal courts, *leets*, or lay juries, in the church, chapel or churchyard (*n*).

It is usual for the bailiff to give fifteen days' notice of the court leet (*o*), by virtue of a precept from the steward of the manor, which, in the more ordinary form, commands the bailiff to warn the tenants and resiants to appear at the place and time appointed for holding the court, and to summon twenty-four honest and lawful men of the hundred or manor to inquire for the king of all matters appertaining to the leet, and the bailiff to attend with the names of the persons he may have summoned.

The author apprehends that notice of the court leet need not be personally served on the suitors, but that it may be given in the church or market, according to the general usage of the particular place; though if it be not an ancient leet (*p*), personal notice is said to be necessary; and clearly no person could be amerced for non-attendance, unless the accustomed warning had been given (*q*).

Suit Real.—Prior to the statute of Marlborough (*r*), (as may be collected from the preceding observations illustrative of the Anglo-Saxon jurisprudence,) all persons of whatever rank in life, both men and women (*s*), servants (*t*) as well as masters, from the age of twelve

(*l*) Scroggs, 83; Co. Cop. s. 31, Tr. 50.

(*m*) Br. Court Baron, 8, cites 8 Hen. 7, 3; Ow. 35; per Bryan, Kitch. 88, citing 8 Hen. 7, 4.

(*n*) 1 Burn. E. L. 361, Can. 88; ante, p. 680, n. (*m*).

(*o*) "About fourteen days," Jenk. Pac. Cons. 2, 3. "Six or more days," Scroggs, 13. But in the absence of an established usage, three or four days' notice only would seem to be sufficient. Greenw. of County Courts, &c. p. 283, in his instructions for holding the sheriff's tourn or court leet, says, "Let the sheriff (or steward) make a precept unto the bailiffs to summon the

court by a reasonable time, to wit, fifteen or sixteen days before the court be kept (if it be less time it is sufficient in law). And see Br. Action upon the Case, 75; Rits. on Courts Leet, 41.

(*p*) Brook v. Hustler, 11 Mod. 76; ante, p. 683.

(*q*) Br. Action upon the Case, 75, cites 38 Hen. 6, 16.

(*r*) 52 Hen. 3, c. 10.

(*s*) But women were never sworn to allegiance in tourns or leets; Co. Lit. 122 b; Br. Leet, &c. 38; for women and infants under twelve years are equally out of the law; F. N. B. 161 A.

(*t*) Fitz. Lete et Hundr. 5, cites 2 Hen.

to sixty years(*u*), were compellable to attend the tourn in which they had been commorant or conversant for a year and a day(*x*), with the exception only of clergy having *curam animarum*(*y*), and to be sworn to their fealty and allegiance(*z*); but by that statute, archbishops, bishops, abbots, priors, earls, barons, religious men and women were excused from attending tourns, "unless their appearance should be especially required thereat for some other cause(*a*);" and persons having tenements in different hundreds are by the same statute excused from attending any tourn but in the bailiwick where they dwell(*b*).

We have seen that Lord Coke was of opinion that the statute of 9 Hen. III. c. 35, extended only to the leet of the tourn, and not to the leets of private persons(*c*); but we learn that he put an opposite construction on the above statute of 52 Hen. III., and thought that the exemption of the latter act extended not only to the king's view of frank-pledge, but the views of frank-pledge of other lords(*d*). It is difficult, however, to reconcile this distinction with the language of the two statutes. The first expressly limits the period of holding the *view of frank-pledge* to the feast of Saint Michael, and then, having used a term equally applicable to the franchises of individual persons, it excepts all existing liberties of the like nature(*e*); but the latter statute, it is to be observed, speaks only of the *tourns* of sheriffs, and

4, 16. A custom for servants to be sworn before the constable and portreeve, who have no power to hold a leet, is not good; Br. Leet, 10, cites 2 Hen. 4, 15.

(*u*) Britt. c. 29; Flet. l. 2, c. 52; Mirror, c. 1, s. 17; 2 Inst. 120, 121; Br. Incidents, 28.

(*x*) 7 Ed. 2, 204; 8 Ed. 2, 276, 277.

(*y*) 2 Inst. 121.

(*z*) 2 Inst. 120, 121; 1 Bl. Com. c. 10; Rita. 8.

(*a*) Britt. c. 29; F. N. B. 160 C.; 2 Inst. 120, 121. But the exemption is personal, and therefore the proprietor of lands which are parcel of a dissolved monastery held in frank-almoign, and discharged of secular services, is not exempt from attending the court leet; Dacre v. Nixon, 2 Roll. Rep. 56.

Tenants in ancient demesne are also exempt from suit to the sheriff's tourn, and probably from suit to any leet, except that of the particular manor to which they are tributary, and of which the tenants were considered in ancient times to form an in-

dependent community; ante, p. 583, n. (*d*). And see Br. Leet, &c. 38. And the author imagines that a barrister or attorney, whose attendance is required at the king's courts at Westminster, could not be amerced for not doing suit at the leet; 1 Vent. 16, 29; and see 1 Mod. 22, ca. 60; 1 Sid. 431, ca. 19. Aliens are incapable of being sworn in leets; Palm. 14; Viner, Alien, (A. 3); Br. Denizen, pl. 2; Mirror, c. 1, s. 17; but the better opinion seems to be that they are not exempt from attending the court leet; Mirr. c. 5, s. 1; 1 Hale, H. P. C. 64; 2 Inst. 121.

(*b*) 2 Inst. 122; Fitz. Lete et Hund. 1.

(*c*) Ante, p. 683.

(*d*) 2 Inst. 121, 122.

(*e*) And see in the Appendix the act of 1 Ed. 4, c. 2, interdicting sheriffs, &c. in their tourns or *law days* from fining and imprisoning upon any indictment or presentment, and which expressly excepts out of the operation of the act persons having liberties or franchises by grant or prescription.

of *bailiwicks* within which *such* tourns were held, and does not use the term *frank-pledge*.

It is, at all events, the better opinion that no man can be of two leets (*f*). So if a man hath a house within different leets, he shall be taken to be conversant where his bed is (*g*). And if a leet jurisdiction be annexed to a manor within a hundred to which a leet is also appendant, the lord of the hundred has not even a concurrent jurisdiction with the lord of the manor, for the one jurisdiction is as high as the other (*h*).

Suit to the leet is due by reason of resiancy, and has no reference to tenure; it is therefore called suit-real, and not suit-service (*i*).

Suit real cannot be done by attorney (*k*), the statute of Merton, 20 Hen. III., being confined to suit-service by freeholders (*l*); nor, as it should seem, can suit-real be released (*m*); but the attendance may be essoigned (*n*), which is generally done by the payment of a penny, or some such nominal sum.

And the non-performance of suit-real is to be punished by amercement, "because for suit-real no distress can be taken, but for the amercement in default thereof (*o*)."

Cert-money—Common Fine.—It should seem to have been the practice for the lord of a hundred or manor, who had a sufficient influence with the crown to obtain the grant of a leet franchise, to claim from his tenants a certain annual sum *pro certo letæ*, as a mean of fixing them with a contribution towards the purchase of the franchise, which secured to them not only an exemption from attending the sheriff's tourn, as we have already noticed, but likewise the advantages of a summary redress in all matters within the jurisdiction of the leet (*p*).

The money thus paid to the lord was in some places called *cert* or *certainty money*, and in others *chief* or *King's silver*; and in others again, as some suppose, *common fine*, or *head money*, or *head pence*;

(*f*) F. N. B. 159, n. c; ib. 160 A.; Kitch. 65, 66, cites 18 Hen. 6, 13.

(*g*) 2 Inst. 122. And see *The King v. Adlard*, 4 Barn. & Cress. 780, where Abbott C. J., in quoting this passage from Lord Coke, said "This is a plain authority that the word *inhabitant*, when the view of frank-pledge is spoken of, cannot mean an occupier." The term "inhabitant" may receive its interpretation from usage; *Rex v. Davis*, 6 Adol. & Ell. 374.

(*h*) Br. Leet, pl. 13, cites 21 Ed. 3, 3.

(*i*) 12 Hen. 7, 15; 7 Ed. 2, 204; Kitch.

82, cites 45 Ed. 3, 23; ib. 145; ib. 291; 2 Inst. 99, 104, 120.

(*k*) Kitch. 145; F. N. B. 25 C.

(*l*) 2 Inst. 104; ante, p. 616.

(*m*) *Tott v. Ingram*, 1 Brownl. 186. But see *Fitz. Abr. Avow.* 211, 212; *Br. Incidents*, pl. 28.

(*n*) *Mirr.* c. 1, s. 17. See as to assign, ante, pt. 1, p. 363.

(*o*) 2 Inst. 118. And see *Gilb. Dis.* 13; F. N. B. 159 D. (n. a), 161 D. (n. a).

(*p*) *Bullen's case*, 6 Co. 77 b; *Scroggs*, 2.

but it has been thought that the common fine was originally a payment to essoign the appearance of all the suitors, except the chief pledges (*q*).

The proper remedy for this payment is action of debt (*r*); but where the cert-money is to be paid at the day of the leet, the defaulters may be amerced; yet as it is for the private advantage of the lord, he cannot distrain for cert-money or chief silver, without he can also prescribe in the distress (*s*). And this is the only matter of a private nature where a prescription to amerce is allowable (*t*).

Mandamus to enforce a Court: Forfeiture of Leet.

As the leet was originally granted for the more convenient administration of justice, the lord is compellable to hold a court by writ of mandamus (*u*): and a leet is forfeitable by non-user, and by acts of abuser (*x*).

A long disuser of the franchise will induce the suspicion of a defect in title:—so in *Darell* (or *The King*) *v. Bridge* (*y*), on a motion for an information in nature of *quo warranto* for holding a court leet, there appeared to have been a grant from the crown in 14 Jac. I., to *R. M.*, his heirs and assigns, of the privilege of holding courts leet, and a court was held by the defendant in 1740, claiming under a conveyance of the manor of *S.* with all courts, &c., in 1739, wherein courts leet were expressly mentioned, but there were no mesne conveyances between the original grant of the leet and 1702, when and previous to 1739 conveyances were made of the manor, “*with all courts thereunto belonging*,” and the Court of B. R. observed, that as there appeared to have been no exercise of the grant till 1740, there was strong suspicion of some defect in title, and therefore it must go to be tried by a jury.

The usurpation of a leet is indeed accounted so great a grievance to the people, as to have been adjudged to be an indictable offence (*z*).

(*q*) *Ritson on Courts Leet*, p. 120.

(*r*) A court of equity will not entertain a bill for law-day silver; *Thornhagh v. Hartshorn*, Bunb. 237.

(*s*) *Godfrey's case*, 11 Co. 44 b; 1 Roll. Abr. 211, (A. 2.), (C. 2.), cites 13 Hen. 4, 9.

(*t*) *Scroggs*, 2.

(*u*) *Rex v. Willis*, Andr. 279; Com. Dig. Mandamus (A); 2 Roll. Rep. 107; *Rex v. Colebrooke*, 2 Ld. Ken. 163; *Harrison's Index*, 1480; *Rex v. The Corporation of Grantham*, 2 Sir W. Bl. 716;

Rex v. The Lord of the Hundred of Milverton, 3 Adol. & Ell. 284; ante, pt. 1, p. 532; and see 11 Geo. 1, c. 4, post, towards the end of the Appendix, as to courts baron and courts leet.

(*x*) 2 Hawk. P. C. c. 11, s. 5; Bro. Abr. Franchise, pl. 10, 26; *Tottersall's case*, W. Jones, 283; Cro. Jac. 155; F. N. B. 160. A. (n. d); 9 Co. 50; *Scroggs*, 3, 4.

(*y*) 1 Sir W. Bl. 47.

(*z*) 6 Mod. 183.

By the opinion of some, a leet is forfeited by the neglect of appointing an able steward, or of electing such officers as are essential to the exercise of justice, as constables, aleconners, &c., or of providing particular instruments of punishment, as pillory, tumbrel, stocks, &c. (*a*); and clearly the franchise may be seized *quousque* for any such neglect (*b*).

SECTION II.

Of the Steward of the Court Leet, (and herein of his Authority to impose Fines);—And of the Office of Bailiff.

Whether the steward of a court leet is to be considered as judge of the court, not only in the absence of the lord, but also in his presence, or whether he is to be deemed an assistant judge, assessor or lawgiver only, when the lord happens to be present, (analogous to the shiregerieve in the Anglo-Saxon shire-gemot court,) the office of steward of a leet court is obviously one of very high importance, and such as ought only to be filled by a person of considerable legal learning, and of sound judgment and discretion (*c*).

The author has already ventured an opinion, that the steward presides in a customary court in a representative character only, and that there is no principle of law to prevent the lord of a manor from holding his own customary court in person (*d*), and the same rule would seem to extend to a court baron, where the suitors are judges of the court. But in a court leet, which we have seen is a juridical franchise held under a grant from the crown, and not necessarily incident to a hundred or manor, the steward appears to the author to be an essential officer, filling exactly the same judicial character as

(*a*) *Steverton v. Scrogs*, Cro. Eliz. 698; S. C. Mo. 573, 607; *Tottersall's case*, ubi sup.; per *Popham*, Cro. Eliz. 125, in *Partridge's case*; Kitch. 24; Br. *Quo warranto*, pl. 8; and see *Keilw.* 138, &c.; but as to stocks, see *Carter*, 29, in *Davis v. Lowden*, where *Bridgman*, C. J., distinguished between stocks and pillory, &c., and said that the former were originally not to punish, but only as the constable's gaol, to keep men in hold, but that as to pillory and tumbrel the lord was bound to find them, and not the inhabitants.

It should seem that for the neglect of providing stocks, a vill is punishable by amercement in leet, and that any of the inhabitants may be distrained for the amercement; *Steverton v. Scrogs*, sup.

So also as to pillory and the like instruments of punishment, if a prescription be alleged; ib.

(*b*) *Lex Man.* 25.

(*c*) 4 Inst. 261, &c. The steward of the court leet ought to be a barrister; per C. J. Holt, *Scroggs*, 33; ante, pt. 1, p. 109.

In a recent case the Court of B. R. adverted to the necessity of a steward's possessing legal knowledge, and considered the charges of an attorney for holding a court leet as charges made in his professional character, and therefore taxable; *Luxmore v. Lethbridge*, 4 Barn. & Ald. 898.

(*d*) Ante, pt. 1, p. 119.

the sheriff in his *tourn*, and not inaptly described as a man "indifferent between the lord and the law (e)."

A condition appears to have been annexed to every grant of a leet franchise, that the lord should appoint an able steward (f), and this circumstance is much in favour of the more general opinion, that the lord cannot hold his own court leet. To this may also be added the decision in *Cholmely & Morton* (g), that the mayor, if owner of a fair, cannot be a good steward of it. And we find it laid down in various books, that the court leet is held before the steward, and that he is the judge in it (h); nor is the author aware that it is stated in any book of authority, that the lord or steward presides as judge of that court, though the expression, as referrible to a customary court, is by no means unfrequent (i).

(e) Powell on the Jurisdiction of Courts Leet, p. 43. It is there said that the lord cannot sit as judge in his own court, in regard that the profits of the court accrue to him; but this reasoning would equally apply to the disqualification of the sheriff in his *tourn*, if the statement be correct that he is intitled to the profits of the court. See Com. Dig. Leet (A).

"The theory was said to be that suitors only were judges in county courts, but late decisions have ruled the sheriff to be judge also;" per Bayley, J., Durham Summer Assizes, 1830; and see *Tinley v. Nassau*, 1 Moody & Malk. 52; post, p. 697, n. (a).

(f) Ante, p. 688.

(g) 2 Sho. 180.

(h) 4 Inst. 261; 6 Co. 12, in *Jentleman's case*; Com. Dig. Leet, (M. 1); and see Dy. 70 b, in *Withers v. Ischam*; Co. Cop. s. 31, Tr. 50.

(i) Co. Lit. 58 a; 4 Co. 26 b; Co. Cop. s. 45, Tr. 102. But it is proper to notice, that, in the case of *Queen & Jennings*, 11 Mod. 215, C. J. Holt is stated to have said, "that in a *private* leet the lord may sit as judge, and exclude the steward," to which is added, (but the author conceives as an observation only of the reporter,) "*Quere*, if so in a *publick* leet."

The author cannot, however, bring his mind to the conclusion that the lord can preside as judge even in the court leet of a manor, situate within a hundred to which a leet jurisdiction is also appended; and there

are many such instances; vide Keene's case, 1 Freem. 348; *The Queen v. Jennings*, ubi sup.; *Rex v. King*, 3 Keb. 197, 230, 251; *Loader v. Samuel et al.*, Cro. Jac. 551; *Cook v. Stubbs*, ib. 583.

The sheriff's *tourn* is frequently designated by the ancient law writers the leet of the hundred, from the circumstance of the *tourn* having been held in each hundred; but when a leet jurisdiction is appended to a hundred, (ante, p. 681,) it is as much a *private* leet as the leet of a manor; and there would seem to be no other distinction between the two franchises than this, namely, that the hundred leet has jurisdiction over such matters as the manor leet should omit to inquire of, just as the sheriff in his *tourn* has jurisdiction over any matters omitted to be inquired of in the hundred court leet, or in the manor court leet, when no hundred leet exists.—The dictum therefore of C. J. Holt (if the authority for it is to be relied upon) must, the author thinks, be held to extend to courts leet generally.

In addition to the reasons already given for supposing that the lord cannot hold his court leet in person, see the language of the act 4 Ed. 4, c. 1, and the several other statutes subsequently extracted in the Appendix, authorizing stewards of courts leet to inquire of various offences. Vide also the act of 1 Eliz. c. 17, post, pp. 692, 693.

pointed assessors to the aldermen, shiregerieves, &c., and others acted as pleaders. Three appear to have been the number at first appointed to assist the alderman, &c. in judgment, but the number was afterwards increased to seven, and then to twelve. These assessors, or assistant judges, were sworn to a faithful discharge of their duties, and not to suffer any innocent man to be condemned, nor any guilty person to be acquitted. The institution of assessors would seem to have been even earlier than the reign of Alfred the Great (*o*).

It is, the author submits, but a natural inference that the sheriff, in his tourn, acted in the same judicial character as he was wont to fill in the parent court, the shiregemot, in the absence of the ealdorman; —and equally so, that on the introduction of the trial by jury (*p*), the judicial and ministerial characters in the sheriff's tourn were not blended, but that the office of impanelling the jury devolved on a subordinate officer of the court, corresponding with the bedell or bailiff of the court leet, and in exact accordance with the ministerial duty of the sheriff at the present day (*q*). That this was the practice in the tourn, and that this was originally, and as a constitutional principle, the practice also in the leet, may be thought to appear by the few references the author proposes to make to our statute law, and

(*o*) Some are of opinion that the *lahmen* (and *red-boran*) of the Anglo Saxons, were the same with the jurors of more modern times. But this opinion is open to very strong objections. See 3 Henry's Hist. of G. B. 346, 347; sed vide Turner's Hist. of the Anglo-Sax. l. 11, c. 9, p. 270 et seq.

See the article in the Edinb. Review, referred to ante, p. 669, n. (*g*), where it is stated that the leet jury of the Anglo-Saxon Hundred was constituted of the twelve eldest thanes, who were to go out with the reeve, and to swear on the hali-dome, that they would neither say forth respecting the innocent, nor conceal the guilty, and that these corresponded to the twelve men of the *Rafstnæmpd* of the Swedish Hærad, but that in this assembly the tithingmen were absent, and all criminal proceedings must have been appeals at the suit of individuals, except where the *Næmpdamen* could make presentment of their own personal knowledge.

(*p*) It is not disputed that this institu-

tion existed in the time of the Conqueror; indeed it is supposed by some to have been introduced into this country in his reign. The principle of the trial by jury may be traced to the Anglo-Saxon custom of allowing a party to clear himself of an accusation by compurgators, generally twelve in number, who were to swear that they believed him innocent of the charge. But these *juratores* appear to have been originally named by the party accused, though afterwards, perhaps, by the court, (Sulliv. 275,) and their functions seem to accord more with the principle of our wager of law, than with that of the trial by jury.

(*q*) It may be right to mention, that the sheriff is in some cases constituted judge by act of parliament, as in re-disseisin by the stat. of Merton, c. 3, "All his proceeding by force of that act is of record, and a writ of error lies on a judgment given against him." 6 Co. 12 a, citing 44 E. 3, 10; and see 1 Eliz. c. 17, s. 10, infra; 2 Barn. & Cress. 58.

to the combined theoretical and practical works of several very eminent lawyers.

In the Appendix to the first part of this treatise will be found an extract from an act of parliament passed in the reign of Richard the Third (*r*), which is, the author submits, conclusive evidence that the sheriff acted judicially *only* in the leet of the tourn, and that the jury were impanelled by the bailiff or other ministerial officer. The preamble of the above act is in these words: "Forasmuch as divers great inconveniencies and perjuries do daily happen in divers shires of England by untrue verdicts given in inquisitions and inquiries before sheriffs in their tourns, by persons of no substance nor behaviour, nor dreading God, nor the world's shame, by reason whereof divers and many of the king's lieges of divers parts of England, by exciting and procuring of their evil willers be wrongfully *indicted*, and other that ought of right to be indicted, by such excitation and procuring oftentimes be spared, contrary to common right and to good conscience:" and it enacts, that no *bailiff* nor other officer should from thenceforth return or impanel any such person, in any shire of England, to be taken or put in or upon any such inquiry in any of the said tourns, but such as were of good name and fame, and had lands and tenements of freehold, within the same shires, to the clear yearly value of 20*s.* at the least, or of copyhold, to the clear yearly value of 26*s.* 8*d.* at the least; and that if any bailiff or other officer within the said counties should thereafter return or impanel any person contrary thereunto, he should lose for every person that he so impanelled and returned, not being of the sufficiency aforesaid, as often as he so offended, 40*s.*, and the sheriff other 40*s.*, the one half to the king and the other half to the person suing; and that every such indictment before any sheriff in his tourn otherwise taken should be void.

By 1 Eliz. c. 17, "for the preservation of spawn and fry of fish," it is enacted (ss. 8, 9 and 10), that the lord of every leet should have full power and authority to inquire of all the offences contrary to the purport, tenor and form of that statute within the precinct of their said leet: such inquiry to be had in manner and form and after such sort as common amerciements or other things inquirable in their court leet were lawfully used and accustomed to be had and made: and that upon every such presentment had in any court or leet, by the oath of twelve men or more as aforesaid, of any offence or offences made contrary to the tenor of that statute, then all such forfeiture above in that statute limited and appointed for such offence should be unto the lord of the said leet for the time being to his own use for

ever, and should be levied in such manner and form as amerciaments for affrays committed within the precinct of such leet were used and accustomed to be levied : and that if any leet after the first day of June then next should be kept, and the steward of the said leet for the time being, or other for him, did not charge the jury sworn in such leet to inquire of all the offences done within the precinct of the said leet contrary to the tenor and form of that statute, then the steward of the said leet to lose and forfeit 40*s.*, the one moiety to the Queen, and the other moiety to the person suing for the same ; and that if any jury sworn in any leet, and being charged to inquire of the offences committed within the precinct of that leet, did wilfully and willingly conceal and make default in presentment, or did not present the offence and offenders, then it should be lawful to the *steward* or *bailiff* of the leet, or his or their deputy for the time being, to impanel one other jury within the said leet, and to inquire of such concealment, default or non-presentment (*s*) ; and that upon such concealment, &c. found and presented, every of the said jurors which so did conceal, make default or not present, should lose and forfeit for every such offence 20*s.* to the lord of the said leet, the same to be levied in manner and form aforesaid for the other offences therein expressed.

By the Year-Book, 7 Hen. 6, 12 b, if the bailiff of the court or other officer refuse to make a panel to inquire, &c. upon the command of the steward, or refuse to execute his office, he may be fined ; 1 Roll. Abr. 219 (Y.), pl. 2, 542 (Y.), pl. 3 ; Br. Leet, 14.

Kitchin, in tracing the origin of the court leet (p. 6), says, " It is called the view of frank-pledge, for that the king there may be certified by the view of the steward how many people are within every leet, and also to have account and view by the steward of their good government and manners in every leet."

Again (p. 82), " Where one hath a leet he hath but the amerce-ments, and the day is to the king, and for that the steward represents the person of the king," cites 41 Ed. 3, 27. (And see S. P. Powell, p. 33, citing 41 Ed. 3, 31). Again (p. 82), Kitchin says, " If the steward of the leet command the bailiff to impanel a jury to inquire for the king upon pain of 40*l.*, and he refuse to do it, he may put upon him the pain of 40*l.*, and at the second time 50*l.* or more ; and note, that upon all pains the lord may have an action of debt," cites 7 Hen. 6, 13.

(*s*) See reference to this statute per Best, J., in *The King v. Joliffe*, 2 Barn. & Cress. 64. Scroggs (p. 16), says, " In some cases the steward may impanel a second jury to inquire into the conceal-

ments of the first, and fine them," cites this statute and 33 Hen. 8, c. 6. And see Kitch. p. 31. Sed vide 6 Geo. 4, c. 50, s. 60 ; post, Sect. V.

Again (p. 280), "The lord of a leet shall not prescribe to amerce the *petty jury* for their false verdict, the same being found by the grand jury; for it is no good custom, but they may be amerced for concealing of any thing which is presentable there, and this is by custom; M. 9 Hen. 6, 42, Custom."

Greenwood (on County Courts, &c.,) in adverting to the institution of the Court Leet (p. 275), observes, "This court is a court of record in all things that appertain to the tourn or leet, and the sheriff of the tourn or steward of the leet are therein judges of record. For whosoever hath the leet hath the same authority within the precinct as the sheriff hath within the tourn." Again (p. 9), "Every bailiff of franchises, deputy and clerk of every sheriff and undersheriff, and every other person which hath authority or takes upon him to return any inquest, jury or tales, or to intermeddle with the execution of process in any court of record, are, as well as the undersheriff, to take the oath mentioned in that statute for the due execution of their office, or forfeit 40*l.*; 27 Eliz. c. 12."

Scroggs, in his instructions for holding a court leet, after noticing the usual form of proclamation, and that the suit roll should be called over and the constables, &c. questioned as to their compliance with the orders they received at the previous courts, says (p. 15), "Then *choose* a jury and name a foreman, whose oath is as follows:—You shall well and truly inquire and true presentment make of all such articles, matters and things as shall be given you in charge; the king's counsel, your companions' and your own you shall keep secret and undisclosed. You shall present no man for envy, hatred or malice, nor spare any man for fear, favour or affection, or any hope of reward; but according to the best of your knowledge and the information you shall receive, you shall present the truth, the whole truth and nothing but the truth, so help you God."

Kitchin in his general directions for holding a court leet, (p. 12,) says, "After this (*viz.* calling the suit roll and entering the essoins), *the jury shall be impanelled*, and first one shall be sworn, and after three or four together, and the oath shall be as followeth:—You shall inquire and faithfully make presentment of all things which I shall give you in charge; your companions' counsel, the king's and your own you shall keep, and you ought to present the truth and nothing but the truth, so help you God (t)."

Again (p. 13), "If any stranger be there, if there be not sufficient residents there *to be impanelled*, the steward may impanel a stranger

(t) In terminating the charge to the jury (p. 40), Kitchin says, "Go together and inquire ye of the matter of your charge, and when you are agreed I shall be ready to take your verdict."

there, for that it is to inquire for the king," &c., cites 3 Hen. 7, 4. Again (p. 224), "If there be not twelve *to be sworn*, the steward may swear a stranger which comes within the view to be sworn in leet;" cites S. C. And again (p. 89), "If there be not twelve to be sworn, the *lord(u)* may cause strangers to be of the enquest;" cites 2 Hen. 7, 4.

In the Court Keeper's Companion, printed in 1717, after pointing out that the court leet is to be opened by the bailiff by three proclamations requiring the attendance of the suitors, and that the resiant rolls to be delivered in by the constables or tithing-men should then be called over, the following direction is given (p. 3):—"The resiants of each tithing being called over, proceed to impanel your juries, *by calling upon the bailiff or tithing-man for the return of the court leet jury*; and after proclamation made, say: You good men that are returned on the jury to inquire for our sovereign lord the king in this court leet,—answer to your names," &c.

A very useful work intitled "The Compleat English Copyholder," printed in 1735, in the instructions given to stewards of courts leet, says (p. 348), "*The steward must call on the reeve or bailiff for a return of the jury*, which must consist of twelve at least," and "*having made choice of a foreman* he must call over the jury, [and] fine those that do not appear," &c.

In Fitzherbert's Nat. Brev. under the title "*Writ pro exoneratione sectæ ad curiam com' vel baron*," it is said—

"And if a man have lands within the precinct of several leets or in one county, and he dwell within the precinct of one of them, and he be distrained to come unto another leet within the precinct of which he dwelleth not, then he shall have a writ unto the sheriff or *bailiffs of the court*, &c. that they do not distrain him to come to that leet within the precinct whereof he dwelleth not; and the writ is such:

"The king to his bailiffs of the honour of C. in the county of Lincoln; or to the *bailiff of A. of B.* in the county of, &c. greeting: Whereas by the common council, &c. that they who have lands in divers hundreds have no necessity to come to the view of frank-pledge except in the bailiwick where they shall be dwelling; we command you that you distrain not *A.* to come to the view of frank-pledge in your court or in the court of your lord of the honour aforesaid, in the county aforesaid, against the form, &c. and the distress, if any, &c.

"And it appeareth that if the party be distrained after that he hath

(u) Unless this word be meant only to express the power of the court, or be a misprint, an inference might be drawn from the observation that the law permits

the lord to hold his own court leet, contrary to the more general opinion, and to which the author has assented in the beginning of the present section.

sued the writ directed unto the sheriff or bailiffs that they do not distrain him, that he shall have an attachment against them: but it seems reasonable that first he have an attachment against the sheriff, or against *the bailiffs* who distrained him to come to the leet in the hundred where he is not dwelling, if he be dwelling within the precinct of another leet, because the statute of Marlebridge is a prohibition in itself, and he who doth contrary to the statute doth wrong unto the party, upon which he may have an attachment without suing forth any writ.

"Note, That men or women who have entered into religion ought not to come unto the sheriff's tourn or unto the leet of any other without great cause; and if they be distrained to come, they may have a writ out of the Chancery to discharge them, which shall be such:

"The king to the sheriff, &c. Whereas by the common council, &c. that men who have entered into religion have no necessity to come to the sheriff's tourn, &c.; or thus, *to the view of frank-pledge*, unless their presence be required for some special cause; we command you that you distrain not the abbot of *I.* to come to your tourn; or thus, *to the view of frank-pledge* in your hundred of *F.* against the form of the provision aforesaid, and the distress, &c.

"And the abbot shall have such a writ unto the *bailiffs* of another lord that they do not distrain him to come to his leet."

The ancient form of precept from the steward to the bailiff on assembling a court leet was as follows:

"*W. S.* gent. steward of the hundred [or manor] of *S.* To the bailiff of the same hundred [or manor] greeting. You are hereby required to warn the leet to be kept by your hundred [or manor] [or leet and court baron to be kept for the hundred of *S.* and manor of *A.*] the first day of April, &c., by nine of the clock in the forenoon of the same day, at the usual place there [or at the now dwelling house of, &c. as the case is]. Given under my hand, &c." (*x*).—Or thus:—

"*J. K.* steward to the bailiff thereof, health: I command likewise and appoint, that diligently you give to understand the view of frank-pledge, of the court there to be held against the Thursday, that is to say, the sixteenth day of October next coming after the date of these presents, and have there this command: And as, &c. Dated under my seal the first day of this month of October, &c." (*y*).—Or thus:

"*A. B.* gent. steward of the manor or hundred or leet aforesaid. To the bailiff thereof, greeting: I command you, that you summon and warn all the tenants of the said manor, as well residents as not

(*x*) Shepp. 25.

(*y*) Kitch. 11; Greenw. 284.

residents, and all customary tenants of the manor aforesaid, that they be before me at *H.* aforesaid, on Thursday the 26th day of March next coming, to do then suit unto the view of frank-pledge, and all things thereunto belonging, &c. Dated, &c." (z).

The form of precept to the bailiff for assembling the court, given in Scroggs (p. 13,) (and the same form is given in the book called *The Compleat English Copyholder*, p. 346,) is as follows :

"A precept to warn the tenants, and summon a jury at a court leet.

To the bailiff, &c.

Manor of *S.* These are to will and require you to give public notice within the said manor, that the court leet and view of frank-pledge for the same manor, (with the court baron of *A. B.* esquire, lord of the said manor,) will be holden at the —, on Monday the — day of —, at ten of the clock in the forenoon; and that you warn all the tenants of and residents within the said manor, that do owe any suit or service at the said court, that they and every of them personally be and appear at the time and place aforesaid, then and there to do and perform the same. And likewise that you summon twenty and four honest and lawful men of the said manor to be and appear at the time and place aforesaid, to inquire for our sovereign lord the king of all such matters as to the said courts do appertain; and that you yourself be then and there also personally present, and have you there the names of such persons as you shall have so summoned, and this precept. Given under my hand and seal, &c."

It is, the author thinks, but a fair conclusion from the foregoing observations and references, that the bailiff of a leet jurisdiction is an indispensable officer, possessing functions of no trivial importance, and bearing a very close resemblance to the sheriff in his present ministerial character, as far, at least, as respects the criminal branch of his office (a).

The remark of C. J. Abbott in the case of *Holroyd & Breare*, already cited at some length (b), that the steward of a court baron is not a minister of that court, but a constituent and essential part of it, appears to the author to sustain the analogy between the sheriff at this day and the bailiff of a court leet.

No mandate (observed his lordship) is directed to the steward, but

(a) Jenk. Pac. Cons. 3.

(a) But the sheriff is a constituent part of the county court, so that he is not responsible for the acts of his bailiff done in execution of the judgments of the court;

Tinsley v. Nassau, 1 Moody & Malk. 52; ante, p. 689, n. (e).

(b) Ante. p. 605 et seq.; vide *Bradley v. Carr, Maude & Wilkinson*, 3 Mann. & Gr. 221; ante, 607.

he makes his mandate to the bailiff, and (added the Ch. J.,) there is this material distinction between the mandate of the sheriff and that of the steward of a court baron; in the former, the sheriff commands the bailiff to make the levy, and concludes, "So that *I* may have the same before the court, &c.;" but in the warrant of the steward, the bailiff is directed to levy, so that *he* (the bailiff) may have the same before the court on the day appointed.

It is true that in the particular case the question arose upon the execution of the process of the court, which was a court baron, where the suitors are the judges; but if the steward of that court, possessing at most a qualified judicial character, is not responsible for a ministerial act, it is no easy task to reconcile that irresponsibility with the execution of a ministerial duty by the steward of a court leet, who presides as judge of the court, with reference more particularly to the justly admired principles of the trial by jury, ingrafted by act of parliament, or usage, on the Anglo-Saxon jurisprudence; nor does the difficulty seem to be diminished by any supposed amenability of the steward for a violation of his judicial functions.

In the case of *The King v. Harrison* (c), a motion was made in the Court of B. R. for an information in nature of a *quo warranto* against the steward of a court leet, (which, according to a MS. note of the late Mr. Serjt. Hill in the margin of the report of this case in the author's possession, was the court of Birmingham,) and against the bailiff and constables, for impanelling a jury not duly summoned, the bailiff being alleged to be the proper officer to summon the jury, *who should be all freeholders*. It appeared that six persons stated to have no right were sworn, and that six freeholders who were present, and who had not been summoned, refused to be sworn and act with them, and thereupon the steward swore six more, and the jury, so constituted by the steward, chose the bailiff of the manor and constables. A rule was obtained for the defendant to show cause why an information should not go against him. On showing cause he relied on the refusal of the six freeholders to be sworn, and the constant course of choosing such officers, urging that it would be dangerous to make a precedent of trying the right of such choice by a *quo warranto*.—The court observed, that there was no room for any complaint against the constables or bailiff, but, if any, it was against the steward, and a rule was made for him to attend, and to show cause why an attachment should not go;—the rule for the rest was in the meantime enlarged.

With the principal and more important duties of the bailiff of the court leet, the author is disposed, therefore, to class that of im-

panelling the jury (*d*), and without any distinction in the office when the lord of the leet possesses only an ordinary jurisdiction, and when a leet franchise exists in a borough or town, of which the head municipal officer is elected by the jury of the court leet (*e*).

(*d*) It should seem that peculiar customs exist in particular places on the point adverted to. The author infers from the MS. note of Mr. Serjt. Hill, just referred to, that a custom of this nature was relied upon in *The King & Harrison*. And it is settled that by custom the steward may nominate the persons to be summoned as jurors; *The King v. Joliffe*, ante, p. 690, n. (*l*). In that case Abbott, C. J., said, "The leet jury is rather in the nature of a grand jury."

(*e*) See *The King v. Joliffe*, sup. Sometimes the jury merely present, in writing, the candidate who may have the most votes, but have no control over the poll. In *The King v. Rowland*, 3 Barn. & Ald. 130, the plea to a *quo warranto* against the defendant, as Mayor of the Borough of Holt in Denbighshire, after stating an immemorial court leet, and view of frankpledge, holden within the borough, set out a charter of 13 Hen. 4, confirmed by letters patent of Queen Elizabeth, and a *by-law* that the mayor and burgesses, or such of them as chose to attend, should assemble at the court leet, held within one month after Michaelmas, and should elect one of the burgesses to be mayor for the ensuing year; and that since the by-law the usage had been conformable to it, and the court in part holden in the morning and in part in the evening, the one being called the morning and the other the evening court; and that the custom had been to elect the mayor at the morning court, which burgess was sworn into office by the steward of the lordship, or his deputy. It then stated that on the 27th October, 1818, a court leet was held before C. W. W. Esq. the steward, in the morning, which was duly adjourned to the evening of the same day; and that the defendant was duly elected at the morning, and sworn in at the evening court. The replication, after tendering is-

suues on the different facts alleged in the plea, denied that the mode of election had been according to the supposed by-law, or that the defendant was duly sworn.

At the trial at the Shrewsbury Summer Assizes, 1819, the mode of election set out in the defendant's plea was proved, with the addition that the custom had been to swear the jury of the leet at the morning court, and then to take the poll for mayor; and that at the evening court the jury used to make a written presentment of the person who had the majority of votes to the steward to be sworn in. The jury had on this occasion presented to the steward the candidate opposed to the defendant, but the latter having the majority of legal votes, the steward swore him into the office of mayor. The jury did not appear ever to have exercised any discretion over the poll.

It was contended for the Crown that the presentment by the jury should have been stated in the plea. Holroyd, J., over-ruled the objection, but with liberty to enter a verdict for the Crown, if the Court of B. R. should be of a different opinion.

A rule *nisi* having been moved for accordingly, the above objection was urged on the part of the crown, and judgment asked at all events on the issue, "not duly sworn." But Abbott, C. J., observed, that all that was alleged in the defendant's plea was proved, and that the presentment was merely ministerial on the part of the jury. That it was their duty to present the person having the majority of legal votes, and they had no discretion on the subject; and that the presentment was as an entry by a town clerk, and not forming a material part of the appointment, it was not necessary to allege it in the defendant's plea. Holroyd, J., added, that if the presentment were an essential part of the custom, it would put it in the

Sometimes, indeed, the bailiff of a leet, when appended to a manor or borough, is *chosen by the jury of the court* (f), and possesses a clear prescriptive right to exercise a discretionary power in impanelling the jury; and in the case of the *King v. Bingham* (g), Lord *Ellenborough* deemed that very important function a sufficient ground for an information in nature of a *quo warranto*, calling upon the defendant to show by what authority he claimed to be bailiff of the manor and borough of Gosport in the county of Southampton. His lordship's observation was, that he did not doubt that the office, as appendant to a court leet, was such for which the information would lie, and noticed particularly the argument that the bailiff was an officer having a discretionary power as to the persons whom he should select for the jury; adding, that the bailiff having no fees annexed to his office, there was no other convenient civil mode of trying the right to it.

The general practice and forms of court keeping appear to the author also to be favourable to the opinion, that all ministerial acts in a court leet are to be executed by the bailiff; and, so far at least as his own experience extends, the steward of the court is totally ignorant even of the names of the jurors until the delivery to him by the bailiff of the list of persons summoned as jurymen, together with the resiant roll, or names of those who are liable to perform suit to the lord at the particular court.

But the author has suggested that the general practice for the bailiff to exercise an uncontrolled power of impanelling the jury of a court leet, may possibly be opposed by a special custom prevailing in some few manors, and that such a custom would be good (h).

The case of *Crane v. Holland* (i) would seem to have established the legality of such a custom, for it was there held that one may be judge and officer, *diversis respectibus*. In that case, which was error of a judgment in Northampton, where the court is held before the mayor and two bailiffs, the error assigned was, because the bailiffs, being judges of the court, could not also be officers to whom process should be directed, "there being no custom that can maintain any to be both officer and judge."—But the Court of B. R. held that it might be good by custom.

And in the case of *The King v. Joliffe* (k), which was a *quo war-*

power of the jury to defeat any election, and that the foundation of the mode of election was the by-law, which was wholly silent as to any presentment.

(f) See *The King v. Joliffe*, *infra*.

(g) 2 East, 308. It appeared also in

this case that the bailiff was sworn in with the other officers chosen by the jury.

(h) Ante, p. 699, n. (d).

(i) Cro. Car. 138; 2 Barn. & Cress. 63.

(k) 2 Barn. & Cress. 54.

ranto, calling upon the defendant to show upon what authority he claimed to exercise the office of mayor of the borough of Petersfield, it appeared by the defendant's plea that at the court leet of the borough the jury presented a fit person to be mayor of the borough for a year, and that the person so presented had always been sworn in at that court before the steward, and that the defendant had been presented and sworn in as mayor according to that usage (1); and by the eighth replication it further appeared, that the court leet had immemorially presented a fit person to be bailiff, who was always attendant upon the court; and that at the court mentioned in the plea, the steward nominated the fourteen persons who served on the jury, and issued his precept to the bailiff to summon those persons, and that the bailiff did accordingly summon them, whereas, (as it was alleged in the replication,) "by the law of the land, the steward should have issued his precept to the bailiff to summon a jury, and the particular persons should have been selected by the bailiff." Rejoinder, that from time immemorial the steward had been used to nominate the jurors; and issue thereon. At the trial the defendant proved, that for more than twenty years the precept to the bailiff had always contained a list of persons whom the steward directed him to summon as jurors. The learned judge (Mr. J. Burrough) told the jury that slight evidence, if uncontradicted, became cogent proof; and they found a verdict for the defendant. A rule nisi for a new trial was obtained, on the ground that there was not sufficient evidence to warrant the finding of the jury, or to enter judgment for the crown *non obstante veredicto*, on the ground that the custom set out in the rejoinder was bad in law. On cause being shown against the rule, the court held that there was no ground for a new trial, but that the observations of the judge, and the verdict of the jury, were well warranted by the evidence.

Abbott, C. J., expressed an opinion that there was nothing in the usage proved to contravene the public policy, or any known rule or principle of law. And that in reference to the passage in Hawk. P. C. b. 2, c. 10, s. 15, which had been relied upon as showing that the bailiff was to select the jury, because the sheriff might fine him for not making a panel, there was nothing inconsistent in saying that it is the bailiff's duty to make the panel, although the sheriff decides upon the persons to be named in it. His lordship added that

(1) It has been decided that a custom for the jurors of a court leet for a borough and manor to present persons to be admitted burgesses, and for the persons so

presented to be admitted and sworn in burgesses by the steward of the borough and manor, is good; *Rex v. Duke of Beaufort*, 5 Barn. & Adol. 442.

there was also another answer to the argument, viz., that the passage might refer to the traverse jury, and not to the grand inquest.

The author submits, in conclusion of these observations, that it is most difficult to suppose that the steward of a court leet is capable of discharging any ministerial or subordinate duty, either in or out of court, as being wholly inconsistent with his judicial character, and with those organic principles of the leet jurisdiction, which, even in its present faded form, are not wholly screened from the searching eye of the antiquary (*m*).

We will now proceed to a more general consideration of the duties and powers of the steward of a court leet (*n*).

It has been said that the steward of a leet may take a recognizance of the peace (*o*), and not only fine but imprison: and it is the better opinion that he may fine for a contempt of court, and commit the person guilty of the act of contempt until the fine be paid (*p*), and also that the steward may award a person to prison for a gross misdemeanor in face of the court (*q*); and again it is said, that in matters within the province of the leet, the steward hath powers equal with the justices of the bench (*r*).

In one particular instance, indeed, it should seem that he has a still greater power, for if there are not sufficient suitors present to constitute a jury, he may compel a stranger passing by to be sworn (*s*), and

(*m*) It certainly would not be easy to reconcile the performance of a ministerial duty by the steward of a court leet with the notion that he is a man "indifferent between the lord and the law;" ante, p. 689. "It is of the greatest consequence to the law of England, and to the subject, that the powers of the judge and jury are kept distinct," &c. Per Hardwicke, C. J., in *Rex v. Poole*, Com. Dig. Enquest, (A. 1).

(*n*) And see post, sect. 5, "Of the Jury and their Presentments."

(*o*) 7 Hen. 6, 12; 10 Hen. 6, 8; 11 Hen. 6, 7; 4 Inst. 263, 264; Powell, of Leet, 32, 33; Br. Leet, 29. But this has been denied; Shepp. 9.

(*p*) But that course would be very unadvisable, as an action of debt lies; post, p. 704.

(*q*) 31 Hen. 6; Fitz. Abr. Lete, 11; *Earl of Lincoln v. Fisher*, Ow. 113; 13 Hen. 4, 12; 10 Hen. 6, 7; 21 Hen. 7, 32; Crompt. J. P. 92 b, 130 b. These

authorities are strengthened by the act of 1 Ed. 4, c. 2 (see Appendix), declaring that sheriffs in their tourns or *law-days* should not have power to fine or imprison on indictment or presentment there, in which act there is an express exception of persons holding liberties and franchises by grant or prescription. But the steward's power to imprison has been denied; Godfrey's case, 11 Co. 43 b. And see 1 Roll. Rep. 35, 74; Scroggs, 5, 16; Shepp. 9; Kitch. 81, says, quære of committing a tenant to prison since Magna Charta, c. 29.

(*r*) Br. Leet, 14, cites 7 Hen. 6, 12.

(*s*) 7 Hen. 6, 12; 12 Hen. 7, 15; Br. Leet, 14, 24; Kitch. 13; ib. 89, cites 2 Hen. 7, 4; ib. 224, cites 3 Hen. 7, 4; 1 Roll. Abr. 542 (Y.), pl. 1, cites 7 Hen. 6, 13. "This power must, however, be confined to those courts in which it is the usage to swear and discharge the jury in the course of the day;" Rits. 6, n. See post, sect. 5.

consequently impose a fine on him for his refusal (t).

We shall presently see that all felonies are inquirable at the court leet, those, at least, which were so at common law, and those of which the leet has express jurisdiction by statute law:—this is to be done by indictment or inquisition by roll indented under the seals of the jurors, consisting of not less than twelve persons, whereof one part is to remain with the person indicting, and the other part with the steward, to be certified by him to the king's justices at the next gaol delivery (u); and persons against whom such charges by indictment or inquisition are found, may be committed by the steward to prison (x); but the leet cannot arraign and deliver the persons indicted (y):—and except for felony, the steward hath no power to inquire by indictment or inquisition, therefore an indictment in leet of assault and battery without bloodshed is not good, for such indictment before the sheriff in his tourn was adjudged void (z); nor can a steward in leet take indictment of robbery out of his precinct (a).

It is generally supposed that the steward of a court leet may be retained by parol (b), except in the case of the king or a corporation, when it is certain that a patent or deed is essential (c).

The better opinion is, that the office of steward of a court leet, being a judicial appointment, is not grantable in reversion, even in the case of the king (d), and that such office is forfeitable for non-user or mis-user (e).

It would clearly appear that a mandamus lies to restore the

(t) 7 Hen. 6, 12; Shepp. 8, 9; Kitch. 13, 89, 224. And see the work entitled "The compleat English Copyholder," ante, p. 695.

(u) See further on this subject, post, sect. 5.

(x) Kitch. 81, says, "The steward may send a prisoner taken for felony to the gaol," cites 13 Hen. 4, 12.

(y) Crompt. J. P. 151, cites 8 Hen. 4, 17.

(z) Dy. 233 b, pl. 14, cites 13 Ed. 4, 10.

(a) Br. Corone, pl. 194, where it mentions that a *capias* was awarded against the lord of the leet and his steward for taking such an indictment, cites 41 Ass. 30; ib. Leet, 18, cites S. C.

(b) Co. Lit. 61 b; Dy. 248 a; Scroggs, 28. But see Scroggs, 35; Comb. 285. It is better to retain the steward of a court leet by deed,—and certainly is essential if

the appointment be for life or years, or to enable the steward to recover his salary by writ of annuity; ante, pt. 1, pp. 110, 117.

(c) Com. Dig. Cop. R. 5; ib. Leet, M. 1; 19 Vin. tit. Steward of Courts, F.; 11 Co. 4, in Curle's case; ante, pt. 1, pp. 109, 110.

(d) Curle's case, 11 Co. 4; Howard v. Wood, T. Jones, 126, 127; S. C. 1 Freem. 473; S. C. 2 Lev. 245; S. C. 2 Sho. 21; Co. Lit. 3 b; ante, pt. 1, p. 116; ante, p. 608, 609. But it has been thought that a judicial office could be granted in reversion by usage; W. Jones, 311; Hardr. 357; 2 Vent. 188. And that the king may so grant without usage; Savage's case, cited Mar. 42; 4 Mod. 280; Co. Lit. 3 b, n. 5; ante, pt. 1, p. 116.

(e) 9 Co. 50 a. Per Chock, Br. Forfeited. de Terres, pl. 54.

steward of a leet (*f*): and we have seen that an information in nature of a *quo warranto* has been granted against a person for exercising the office of steward of a court leet (*g*); but the author has also shown that in one instance it was refused, as being a private right (*h*).

Deputy-steward.—It does not appear to have been decided whether the steward of a court leet can exercise the office by deputy; but at all events, as it has been doubted whether even a general steward of a manor can act by deputy in the absence of an express power, or an established custom, the author must suppose that the steward of a court leet, who presides there in a judicial character, could not depute a person to perform the duties of the office for him, unless an authority of that nature should be contained in his patent or deed of appointment, or he could show an established custom for it (*i*).

What Fines may be imposed by the Steward of a Court Leet.

The steward may set a fine on any man for a contempt or disturbance in court (*k*), and such fine is recoverable in an action of debt (*l*); but the fine must be reasonable (*m*), though it should seem that the reasonableness need not be averred (*n*); nor need the fine be affeered, as in the case of an amercement (*o*).

(*f*) Ile's case, 1 Vent. 153; The King v. The Churchwardens of Kingscleere, 2 Lev. 18; Stamp's case, 1 Sid. 40; Sir T. Raym. 12. But see 12 Mod. 666; Rex v. Cann, T. 10 & 11 G. 2, Andr. 14.

(*g*) The King v. Hulston, 1 Str. 621; The King & Medlicot, 2 Barnard. B. R. 222; ante, tit. "Court Baron," p. 608, n. (*e*).

(*h*) Rex v. Cann, Andr. 14; ante, p. 608, n. (*e*).

(*i*) See Scambler v. Waters, Cro. Eliz. 637; The Earl of Rutland & Spencer's case, 4 Leo. 243, 244; Cro. Car. 50, 279, 556. Vide also Scroggs, 36, 37; ante, pt. 1, pp. 119, 120.

It is only when the office is purely ministerial that the duties may, as a matter of course, be performed by deputy, (ante, pt. 1, pp. 119, 120, 122,) and the deputy, though he may act in his own name, except in special cases, should act in the name of his principal; per Doderidge, Just. Roll. Rep. 274, pl. 49; Com. Dig. Officer, D. 5; ante, pt. 1, p. 120. N. B.

Under a grant of a franchise, all writs should be returned by or at least in the name of the principal, unless the grant contain a special provision authorizing the return to be made by the grantee of the liberty *by his or their bailiff or bailiffs*, as in Newland v. Cliffe, 3 Barn. & Adol. 647.

An infant cannot preside either as steward or deputy-steward in a court leet; Scambler v. Waters, Cro. Eliz. 637; ante, pt. 1, p. 111.

(*k*) Griesley's case, 8 Co. 38 b; Dy. 233 b, pl. 14; Kitch. 82, 86.

An action upon the case will lie by the lord of the leet against a person disturbing his steward in holding a court leet; 38 Hen. 6, 16; Br. Action on the Case, pl. 75.

(*l*) Br. Leet, 29; Kitch. 81, 82, 86, cites 7 Hen. 6, 13; 10 Hen. 6, 7.

(*m*) Griesley's case, sup.; 2 East, 59, in Davidson v. Moscrop.

(*n*) Co. Ent. 571, 572; 2 East, 59.

(*o*) Kitch. 82, cites 10 Hen. 6, 7.

In an action of debt for a fine imposed on the defendant at a court leet, the plaintiff set forth in his declaration that he had a leet within his manor of H., to which, &c., and that at a court held, &c., before J. S., his steward, he the said steward told the defendant that he was a suitor, and ought to be sworn to inquire, &c., who replied "in saying so thou liest," and for those words the steward set a fine of 20s., for which the action was brought. The case was at issue upon a plea of *nil debet*, and a verdict was given for the plaintiff. It was moved in arrest of judgment, that this was not a contempt for which a fine ought to be imposed, but the court decided otherwise, and that the action was well brought (*p*).

And where the defendant had put on his hat in contempt of the court, and on being admonished by the steward of the impropriety, he replied that he did not value what he (the steward) could do to him, whereupon the steward set a fine of 40s., for which the lord of the leet brought an action of debt, and it was adjudged that the action lay (*q*). But in a case where the observation only implied a doubt of the right of holding the court in the particular place, it was adjudged that the steward was not justified in setting a fine of 5*l*. for the words spoken (*r*).

The refusal to make a presentment is a contempt for which the steward may assess a fine on the jury (*s*); but the fine must be set severally (*t*); and so in all cases, except only where there is an uncertainty of persons, as in a fine on a town for the escape of a felon (*u*); and if any suitor present in court refuse to be sworn on the jury (*x*), or if any of the jury depart without giving their verdict (*y*), or give it before all are agreed (*z*), they may be fined by the steward.

The steward is also authorized to set a reasonable fine on any person elected by the jury to fill the office of constable or tithing-man, who being present should refuse to be sworn (*a*); and on a constable or tithing-man refusing to make presentment (*b*).

(*p*) *Earl of Lincoln v. Fisher*, Cro. Eliz. 581; S. C. Ow. 113; S. C. Mo. 470.

(*q*) *Bathurst v. Cox*, Sir T. Raym. 68; Scroggs, 150, 151.

(*r*) *Berrington v. Brooks*, T. Jones, 229.

(*s*) 10 Ed. 3 (or Ed. 4); Powell, 32; Kitch. 82.

(*t*) *Bullen v. Godfrey*, 1 Roll. Rep. 73; 11 Co. 43; Dy. 211 b, pl. 31.

(*u*) 11 Co. 43 b, in *Godfrey's case*.

(*x*) 10 Hen. 6, 7; 39 Ed. 3; 44 Ed.

3, 15; Kitch. 82; ib. 86, cites 13 Hen. 6, Leet, 11. And see *Swan v. Morgan*, Lex Man. App. 80.

(*y*) *Griesley's case*, 8 Co. 38 b.

(*z*) 40 Ass. 10; 1 Roll. Abr. 219, (Y.) pl. 4.

(*a*) *Fletcher v. Ingram*, Salk. 175; S. C. 5 Mod. 130; S. C. 1 Lord Raym. 70; S. C. Skin. 635; 2 Hawk. P. C. 64.

(*b*) *Griesley's case*, sup., cites 10 Hen. 6, 7 a.

We have also seen that the bailiff's refusal to execute his office is an offence fineable by the steward of a court leet (c).

But a fine for contempt can only be set when the offence is committed in court; so where in replevin the defendant justified the taking a distress for a fine set on the plaintiff by the steward of the leet, for that he (the plaintiff) did not appear at the court to do suit and service there; upon demurrer to this plea the plaintiff had judgment, the court holding that the offence ought to have been presented, and the plaintiff amerced; and *Periam* said, "if the steward shall assess the fine, he will assess it too grievous, and so the party shall have no remedy, but for amercements a *moderata misericordia* lieth," citing 10 Hen. 6, 7 (d); but this writ, as it should seem, only lies where a person is amerced in a court baron, or other court which is not a court of record, and not even there if the amercement be affeered (e).

The author apprehends, however, that the steward of a court leet may set a moderate fine on any resiant summoned as a juror and not attending the court to be sworn; and that the lord's remedy for such fine is an action of debt (f).

Of Amercements, &c.

An amercement is generally considered to be the act of the jury (g) and a fine the act of the court (h), though it has been said that the amercement is the act of the court, and the affeement the act of the jury (i).

(c) Ante, p. 693.

(d) *Hall v. Turbett*, Cro. Eliz. 241. And see *Lukin v. Eve*, Mo. 88, 89; 8 Co. 41 a. This applies equally to a constable not present at the time of his election, whose refusal is to be presented at the next court, and then he shall be amerced; *Fletcher v. Ingram*, ubi sup.

In replevin the defendant avowed for distress for pain assessed in leet for not serving as constable, nor finding sufficient deputy, according to the custom that he that is chosen must serve *per se* or another. And it was held on demurrer that the presentment was ill, being that the plaintiff should find sufficient person to serve for him, not giving him liberty to serve for himself; *Eacourt v. Stokes*, 1 Keb. 416.

(e) F. N. B. 75 A; ib. 76 D., and n. (a); *Stubbs v. Flower*, 1 Bulst. 125.

(f) *Kitch*. 86; 8 Co. 41 b; *Gery v. Wheatley*, 1 H. Bl. 163, n. In the possible case of all the resiants refusing to attend so that no court could be held, see post, p. 720, n.

(g) 7 Hen. 6, 12, cited Br. Leet, 12; ib. *Fine pur Contempts*, 44; ib. *Amercement*, 65; 8 Co. 41; *Palm*. 7; 3 Keb. 362, in *Cutler v. Creswick*; *Morgan's case*, 8 Mod. 300; S. C. *Gilb. Eq.* 209; 2 East, 59.

(h) See Br. Abr. as in the last note; *Keilw.* 65, pl. 5; *Godfrey's case*, 11 Co. 43 b; 2 East, 59.

(i) See 8 Co. 406, in *Griesley's case*; 2 Keb. 613, in *Rex v. Dickenson*; 1 Sho. 62, in *Matthews v. Cary*; *Stephens v. Hawton*, 2 Str. 847. Vide also the case of an amercement for not appearing at the sheriff's tourn, where the assessment of it was considered to be a judicial act,

We have just seen that for not appearing at the court leet the suitor is to be amerced, as a fine can only be set by the steward for an offence in court (*k*), and the jury are to present that the party ought to do suit at the particular court (*l*). But it is not necessary to prove notice on the suitors (*m*).

No person can be amerced in leet for a private trespass done to the lord (*n*); nor could the right be upheld even by custom (*o*), though this was formerly doubted (*p*). But a deciner may be amerced for nonpayment of the *certum letæ* if a prescription be shown for it, but clearly not without (*q*).

An amercement in a court leet, as in a court baron, should be reasonable (*r*) and must be affeered (*s*); and yet it has been said that if the jury will amerce in a *certain* amount, there needs not any affeement (*t*).

The affeement of an amercement must be in open court by two or more persons appointed by the steward, and sworn for that purpose, and not by the jurors at large (*u*); but the affeers may be selected from the jury; and this is the constant practice (*x*).

The reasonableness of an amercement once affeered cannot be questioned in a writ of error, nor shall the party have a *moderata misericordia* (*y*); the latter writ, indeed, is only applicable to courts that are not courts of record (*z*).

When a nuisance is presented by the jury of the court leet, it is usual to conclude with an order for its removal under the penalty of some fixed sum (*a*); and should the order be disobeyed, then for the jury at the succeeding court to present the neglect, and that the pain

Gryffyth v. Biddle, Cro. Car. 275. The jury are to amerce, and the sum assessed is to be affeered by officers elected by the steward; *Evelin v. Davies*, 3 Lev. 206; *Wilton v. Hardingham*, Hob. 129. Per Dolbin, J., 1 Sho. 62, in *Matthews v. Cary*; 8 Mod. 298.

(*k*) Ante, pp. 704, 706.

(*l*) *Hall & Turbett, Lukin & Eve*, ubi sup.

(*m*) *Ib.*; *Skin*. 393, in *George v. Lawley*.

(*n*) 1 Roll. Abr. 211 (C.), pl. 1, cites 12 Hen. 4, 8 b; *Rex v. Dickenson*, 1 Saund. 135; S. C. 2 Keb. 606, 613; *Rex v. Ayres*, 2 Keb. 139; 3 Keb. 644; *Sir T. Raym.* 160.

(*o*) *Wood v. Lovatt*, 6 T. R. 511.

(*p*) 12 Hen. 4, 8, cited *Br. Leet*, 12; *ib. Custom*, 16; *ib. Amercement*, 19.

(*q*) Ante, p. 686.

(*r*) Co. Lit. 126; 2 Inst. 27; ante, p. 621 et seq.

(*s*) *Mirr.* c. 5, s. 1; *Br. Amerciament*, 50, cites 10 Hen. 6, 7; 8 Co. 39 b; sup. n. (*i*).

(*t*) Per Holt, C. J., in *Matthews v. Cary*; 1 Sho. 62; and 11 Mod. 76, in *Brook v. Hustler*.

(*u*) *Evelin v. Davies*, 3 Lev. 206; *Lex Man.* 13, App.; sup. n. (*i*). And it must be made at the same court and be so pleaded; *Cutler v. Creswick*, 3 Keb. 363.

(*x*) Ante, tit. Court Baron, p. 622.

(*y*) *Stubbs v. Flower*, 1 Bulst. 125; *Crompton of Courts*, 225 b.

(*z*) F. N. B. 75 A; ante, p. 706.

(*a*) For a public nuisance a pain may be set on default of abatement; *Rex v. Dickenson*, 2 Keb. 613; S. C. 1 Saund. 135.

set at the former court is thereby forfeited. This penalty, which does not require to be affeered, being distinguishable from an amercement (*b*), may then be recovered by the lord in an action of debt, which the author apprehends is his only proper remedy (*c*).

Of the Remedies for Fines, Amercements, &c.

We have seen that a fine set by the steward in leet is recoverable in an action of debt (*d*). It may also be recovered by distress (*e*), even without a custom, a distress being incident to a court leet of common right (*f*); and the lord may sell the distress (*g*); but when the fine is not of common right, or when it is for a private advantage of the lord, it cannot be distrained for without a prescription (*h*).

An amercement in a court leet is recoverable either by action of debt (*i*) or by distress; and though it is said in some of the books that a man may prescribe for amercement in leet to distrain and sell the distress (*k*), yet it should seem that the remedy by distress is of common right equally as for a fine (*l*).

And the distress may be taken in any place within the precinct of the leet (*m*), even in the common street (*n*); for the stat. of Marl. c. 15, which prohibits the taking of a distress in the highway, is to be intended only of distresses taken for services due by way of tenure of lands (*o*). But the cattle of a stranger cannot be taken, as in a distress for non-performance of suit (*p*).

(*b*) *Rex v. Dickenson*, sup. Sed vide *Pratt v. Stearn*, Cro. Jac. 382, where the words "pain" and "amercement" were used as synonymous.

(*c*) *Br. Leet*, 37, cites 23 Hen. 8; *Ritson*, 115. But see *Kitch.* 86.

(*d*) *Ante*, pp. 704, 705. And see *Doe v. Ball*, Lex Man. 85, App.; *Keilw.* 66b; *Kitch.* 86.

(*e*) *Swan v. Morgan*, Lex Man. 80, App.; *Keilw.* 66b.

(*f*) 1 Roll. Abr. 668 F. pl. 2, 3; *Pier-Ridley* (or *Ridge*), 2 Keb. 701, 739, 745; *Sir T. Raym.* 204; 1 Vent. 105; *Godfrey's case*, 11 Co. 45 a; *Griesley's case*, 8 Co. 41 b; *Kitch.* 86.

(*g*) *Br. Leet*, 20; *ib.* *Distress*, 40, 72, cites 3 Hen. 7, 4.

(*h*) 11 Co. 44 b, in *Godfrey's case*.

(*i*) *Br. Dette*, 180, cites 10 Hen. 6, 7; *Keilw.* 66b; 8 Co. 41 b; *Kitch.* 86. And wager of law was not allowed even before the stat. of 3 & 4 W. 4, c. 42 (*ante*, p. 624; *Kitch.* 188; *Br. Ley Gager*, 99, cites 10 Hen. 6, 7.

(*k*) *Br. Leet*, 34; *ib.* *Prescrip.* 40, cites 21 Hen. 7, 40. "The lord may sell the distress taken for an amercement in leet, as the king may sell the distress, for that it is the king's court; 3 Hen. 7, f. 4." *Kitch.* 85; *Br. Distress*, 72.

(*l*) 1 Roll. Abr. 666 F., pl. 2; 1 Brownl. 36; *Kitch.* 85, cites 10 Hen. 7, 15, and other cases from the Year-Books; *Griesley's case*, 8 Co. 41; *Godfrey's case*, 11 Co. 45 a; *Br. Distress*, 45; *ib.* *Prescription*, 61, cites 9 Hen. 7, 22; *Scroggs*, 145; *Gilb. Dis.* 12, 13. The power of distress is suspended by the possession of the king, *Br. Leet*, 8; *Kitch.* 85, 87; *sup. n.* (*f*).

(*m*) *Br. Leet*, 28, cites 2 Hen. 4, 24; *Kitch.* 86, cites 8 R. 2, *Avowry*, 194.

(*n*) *Kitch.* 86, cites 34 Ed. 2, 19 Ed. 2, *Avowry*, 221.

(*o*) 2 Bac. Abr. *Distress*, p. 355.

(*p*) *Goosey v. Pot*, Ow. 146; *The Prior of Tindal's case*, 41 Ed. 3, 26; *Br. Leet*, 4; *Scroggs*, 146; 2 Bac. Abr. 355. But see *Kitch.* 86; *Noy*, 20.

In justifying a distress for an amercement, the defendant must show that the offence was committed within the jurisdiction of the leet; and for this purpose he ought to plead the bounds of the leet with certainty (*q*); and it is requisite also to show in what sum the plaintiff was amerced, or rather the particular sum set by the affeerors (*r*).

The bailiff in justifying the distress for an amercement may plead the amercement without averring the fact, but this is in trespass only; in replevin it is otherwise, for there he must recover on the merits, as he makes a title for the return of the goods (*s*).

And the better opinion is, that the bailiff of a court leet cannot distrain for an amercement *ex officio* (*t*), but only by a special warrant from the steward; not even by command of the lord of the manor (*u*).

In debt for an amercement, the declaration ought to express the names of the affeerors, or it shall be intended to be done by the steward (*x*): and it should also aver that the affeerment was made at the same court as the amercement (*y*).

And in *Monnop v. Thomas* (*z*), upon a distress for an amercement in leet, it was held that the issue whether C. and H. were *afferratores curie predictæ* ought to have been tried by the record.

In an avowry for an amercement in leet, it is not sufficient to say *presentatum fuit* at the leet that the plaintiff did such an act, but he must aver the act, and not rely upon the presentment (*a*).

And in debt for an amercement in leet, the declaration must also aver inhabitancy as well at the time of the amercement as of the offence; but this will be cured by verdict, for it must be proved at the trial (*b*).

(*q*) *George v. Lawley*, Skin. 393; *Wilton v. Hardingham*, Hob. 129.

(*r*) *Evelin v. Davies*, 3 Lev. 206; *Wilton v. Hardingham*, sup.; *Brook v. Hustler*, 1 Salk. 56.

(*s*) *Stephens v. Haughton*, 2 Stra. 847; *Lamb v. Mills*, Skin. 587; S. C. 4 Mod. 378; *Matthews v. Carey*, Carth. 73; S. C. 3 Salk. 52.

(*t*) *Rowleston v. Alman*, Cro. Eliz. 748; *Steverton v. Scrogs*, ib. 698; S. C. Mo. 573, 607.

(*u*) Carth. 75, in *Matthews v. Carey*. And see *Lamb v. Mills*, sup. "Not without an especial warrant from the steward or lord," per Popham, in *Steverton v. Scrogs*, sup. "The bailiff may distrain for lawful amercements by reason of the office;" per Gawdy, ib. See 9 Vin. Abr. pp. 134, 136.

It should seem that the bailiff of a liberty of the duchy may distrain *ex officio* for fines and amercements for the king, and keep the same fifteen days, and that such distress may then be sold unless the party enter into bond or show good cause, but that he cannot replevy. See Ritson on Courts Leet, 121, n.

Whether the bailiff is punishable if there be any irregularity in the distress, see Keilw. 52, pl. 3; ib. 66 b.

(*x*) 8 Co. 40 b, in *Griesley's case*; *Cutler v. Creswick*, 3 Keb. 362, 363; Keilw. 66 a.

(*y*) *Cutler v. Creswick*, sup.

(*z*) Cro. Eliz. 860.

(*a*) Sir T. Raym. 337.

(*b*) Bul. N. P. 167, cites *Wicker & Norris*, 8 Geo. 2.

Where in debt for amercement the declaration stated it to have been affeered at a court holden before the steward, but it appeared in evidence that the court was really holden before the deputy steward, the variance was held to be fatal (c). And where in debt for an amercement the declaration stated that the defendant was summoned to serve on the jury of the court *leet* and court *baron*, but the summons was to serve on the jury of the *leet* only, the plaintiff was nonsuited, Lord Mansfield observing that this was a matter of strict law, and the plaintiff was bound to prove the averment in the declaration, which the summons did not prove (d).

It should seem that in debt for a penalty in *leet* for not abating a nuisance, it is not necessary to allege notice of the order, for the party being within the jurisdiction of the *leet* is to take notice of it at his peril (e); and this rule applies equally to a penalty in *leet* for breach of a bye-law (f).

The defendant may traverse the fact of the presentment in debt for amercement in *leet* (g): but where an amercement had been estreated into the duchy court of Lancaster and paid, the court of B. R. would not grant a *certiorari* to remove the record and proceedings out of a court *leet* in order to inquire into the propriety of an amercement, *Rex v. Heaton* (h). The case was this; the manor and liberty of the *Savoy* is parcel of the possessions of the duchy of Lancaster. Previous to the Easter court the *steward* issued his warrant to the *chief bailiff*, requiring him to summon all resiants, &c. to appear and do suit and service, and also to warn a sufficient number of resiants to be upon pain to serve offices, &c.; whereupon the chief bailiff issued his precept to the *deputy* to summon them accordingly. *Heaton* had been so summoned to attend the court at twelve o'clock on the 3rd of May, 1787; he came accordingly at the exact time, and waited a few minutes at the court-house, but the steward not being there, he desired one of the officers present to take notice that he had duly attended, and that being elsewhere engaged he was obliged to go away. Though it was the practice to issue the summonses for twelve o'clock, it had not been usual to open the court till near one o'clock, and this was generally known. The court was opened on this occasion at the usual time, and *Heaton* not appearing, the jury presented him, and amerced him for his default in the usual sum of 5*l.*, and the amercement was duly affeered. In Trinity term following the amercements were estreated by the steward, and the estreat roll delivered by

(c) *Wyvill v. Shepherd*, 1 H. Bl. 162.

(d) *Gery v. Wheatley*, 1 H. Bl. 163, n.

(e) *Lee v. Boothby*, M. 11 Car. B. R.;
Vin. Abr. Incroachment, pl. 2; ib. Con-
dition (B. d.), pl. 6.

(f) Ante, p. 625.

(g) Carth. 74; 1 Lord Raym. 470;
Bul. N. P. 167. See further as to tra-
verse, post, s. 5.

(h) 2 T. R. 184.

him upon oath into the court of the duchy chamber of Lancaster; in consequence of which the usual writ of *levari facias et capias* issued under the duchy seal to the bailiff of the liberty (i), into whose hands *Heaton* paid the 5*l*.

A rule was obtained in the Court of B. R., calling on the steward of the manor and liberty of the Savoy to show cause why a writ of *certiorari* should not issue to remove into that court the record and proceedings of the court leet, held as above mentioned, in order that the same might be quashed for irregularity; and it was urged against the rule that *Heaton* had no claim to this indulgence, his attendance being merely illusory, and a *certiorari*, being originally a prerogative writ, was never granted of course; and that in point of law it was a decisive objection to the application, that the fine had been estreated and paid; that the records and proceedings of the leet were become part of the records of the duchy chamber, and could no more be removed than the presentments and fines of any other inferior court, after they were etreated into the Exchequer (k); nor was *Heaton* without remedy, for he might have applied to the duchy court to remit or mitigate the fine (amercement) according to equity. In support of the rule it was contended, first, on the merits, that *Heaton* having attended as above stated, had thereby showed his respect to the court, and that on a *certiorari* he would be intitled to traverse the presentment itself (l); and secondly, on form, the party being intitled to his *certiorari* if the presentment appeared on the face of it to be informal (m); and that there were two objections to the presentment; 1st, that it was an amercement without affeerment, but even if in truth affeered, yet not being recorded, it must be taken that there was none, for that fact could not be tried *per pais* (n); 2ndly, that the amercement ought to have been by the court and not by the jury (o). But the court, without hearing the other side on the objection to the presentment, were clearly of opinion that a *certiorari* would not lie, as the *fine* (amercement) had been estreated and paid.

Amercements in the king's leet are to be estreated into the Exchequer (p), and may be levied by *levari facias*; and action of trespass for any thing done in the execution of that process must be

(i) See as to a distress by the bailiff of a liberty of the duchy, ante, p. 709, in *notis*.

(k) The case of The Sheriff of London and Middlesex, T. Jones, 169, was cited.

(l) *Rex v. Roupell*, Cowp. 458; Dy. 13, pl. 64.

(m) Cowp. 460; 1 Saund. 135.

(n) *Monnop v. Thomas*, Cro. Eliz. 860;

ante, p. 709.

(o) Ante, p. 706; Fitzg. 46, 109; 1 Barnard. 214.

(p) Anon. Hardr. 471. In ordinary cases the amercements are estreated or extracted from the court roll, or record of proceedings in the leet, and a warrant from the steward to the bailiff to levy the same subjoined.

brought in the office of pleas in the Exchequer, the bailiff levying the distress as officer of that court (*q*).

And the above cited case of *The King & Heaton* shows that amercements set at courts, of which the king is lord in right of his Duchy of Lancaster, are to be recovered by a similar process out of the duchy court.

SECTION III.

Of By-Laws.

By-laws may by custom be good in the court leet (*r*), as well as in the court baron (*s*), and they are to be embodied in the presentments and verdict of the jury and homage; but it is clear that they are not binding of common right (*t*), except as to matters properly cognisable in the leet, such as the neglect of repairing highways, bridges, &c. (*u*). And in pleading the custom, the by-law must be set forth (*x*).

And the author must suppose that a custom to make by-laws at a court leet, regarding matters of a private nature, and not naturally belonging to the leet, could not be supported (*y*). But in the case just cited from Hardres's Reports (*z*), it appeared that at a court leet held for the king within the honour of *Grafton*, a person was fined 20*l.*, according to a by-law for the payment of 5*l.* a month by every one within the leet that should receive or place an inmate within any house there, without giving security to the overseers of the parish to discharge the parish. The fine was estreated into the Exchequer, and process issued to levy it; and Hale C. Baron held it to be a good by-law, and frequent in leets, but said that it was hard to estreat the fine thither without taking the usual remedy for it by distress, and to extend the party's lands upon it, when, perhaps he might have something to plead to it, as that he was not within the leet, or that he re-

(*q*) 1 Roll. Abr. 533; Lane, 55, 56.

(*r*) Lane, 56; Br. Custom, 32; ib. Prescrip. 40; Fitz. Prescrip. 67; Rud-dock's case, 6 Co. 25 a; S. C. Cro. Eliz. 648, 649.

(*s*) Ante, p. 625 et seq.

(*t*) Wormleighton v. Burton, Cro. Eliz. 448; Lane, 56.

(*u*) 5 Co. 63 a, in *The Chamberlain of London's case*; vide also Kitch. 82, 156, cites 11 Hen. 7, 14; 21 Hen. 7, 40; ib. 89, cites 44 Ed. 3, 19; Jeffrey's case, 5 Co. 66 b; Gateward's case, 6 Co. 60 b; Abbot v. Weekly, 1 Lev. 176. And a by-law must be just and reasonable to be

supported, per Parker, C. J., 10 Mod. 133.

(*x*) *Gerrish v. Rodman* (or *Rodborne*), 3 Wils. 155, 164.

(*y*) Gouldsb. 79, pl. 13; Scroggs, 141; *Rex v. Arnould*, Tr. 21 Car. 2, B. R. cited ib. 142; Kitch. 89; per Tirrel, in *Earl of Exeter v. Smith*, Carter, 173; S. C. 2 Keb. 368; but see contra in the last case (per Wild & Archer); vide also *Clarke's case*, 5 Co. 64 a. Whether a by-law for repairing a church is for the public good, and therefore binding, see ante, p. 625, n. (*x*); Co. Lit. 110 b.

(*z*) *Anon.* 471; ante, p. 711; Scroggs, 11; and see Lane, 55, 56.

ceived no inmate. But the party was put to plead, the officers of the court observing that it was usual to estreat such fines into the Exchequer, *when they belonged to the king*.

We have seen that the freehold tenants of a manor are bound to take notice of a by-law in a court baron (a).—When, therefore, a by-law in court leet is established by custom, the author apprehends that personal notice of it would be unnecessary, as every inhabitant (b) within the precinct of a leet is bound to attend the court.

SECTION IV.

Of the Election of Officers at the Court Leet.

Chief Magistrates, &c.—We have seen that in some manors the jury of the court leet are invested with the highly important power of choosing the mayor, portreeve, or other chief municipal officer of the borough or town to which the leet jurisdiction is appended (c), but that in others the jury merely present in writing the candidate who may have the majority of votes, and have no control over the poll (d); and that in places where no charter of incorporation exists, *vianders* or other functionaries are chosen at the leet, who are the returning officers for the year (e).

Bailiff.—We have also seen that in some manors the bailiff is chosen by the jury, and sworn in with the other officers elected at

(a) Ante, p. 626.

(b) *Rex v. Davie*, ante, p. 686, n. (i).

(c) Ante, pp. 698, 699, 700.

When a resiant inrolled as such at the court leet of a borough, becomes thereby intitled to vote at the election of members of parliament, the inrolment will be compelled by a *mandamus* to the mayor or other proper officer; but it is essential to establish the connexion between the leet and corporation by affidavit; *Rex v. Mayor, &c., of West Looe*, 3 Barn. & Cress. 683; ante, p. 690, n. (k).

(d) Ante, p. 699, n. (e); and see *The King v. Bankes*, 3 Burr. 1452, in which the Court of B. R. discharged a rule previously granted, calling on the lord of the leet for the borough manor of Corfe Castle, Dorsetshire, and on the steward, the bailiff, and deputy bailiff, and upon the jury summoned and ready to be returned, to show

cause why a *mandamus* should not issue, requiring the lord and his steward to hold a court leet, and the bailiff, or in his absence the deputy bailiff, to return and deliver unto the court leet the panel or list of the jury summoned by the bailiff, and requiring the steward to swear the jury, and the jurors to be sworn, and to proceed to the election of a mayor, (and which rule had been amended by inserting the name of the mayor *de facto* :)—the ground for discharging the rule appears to have been that the election was not merely colourable, (and clearly therefore void,) but *doubtful*, and fit to be tried on an information in nature of a *quo warranto*. Vide also the act 11 Geo. 1, c. 4, in the Appendix; *Rex v. The Lord of the Hundred of Milverton*, 3 Adol. & El. 284; ante, pt. 1, tit. “*Mandamus*,” p. 532.

(e) Ante, p. 690, n. (k).

the court leet (*f*). When that custom does not prevail, he is more usually appointed by the steward, but sometimes by the lord.

Constables.—The better opinion is that both high and petit constables were recognised by the common law, the former being officers of hundreds, and the latter officers of tithings (*g*); and they appear in ancient times to have been chosen at the court leet, or when no leet existed, at the tourn (*h*).

It has, however, been doubted whether the high constable is an officer of which the common law took notice (*i*). Lord Coke supposed that a petit constable was an officer at common law, but that the constable of a hundred was created by the statute of Winchester (*k*); yet that statute has on the contrary been thought to furnish evidence of the previous existence of such officers (*l*).

There is a singular paucity of authorities as to the power of the court leet to elect a constable for a vill or hamlet, where no such office previously existed, or to elect a second constable or tithing-man, where there had previously been one constable only; yet it is generally supposed that the court leet, in either the one case or the other, possesses a discretionary power; for as at common law the constables were subordinate officers to the conservators of the peace, so are they now the proper officers of the justices (*m*). And in *James v. Green* (*n*) Lord Kenyon said, "It is no new thing, if we may have

(*f*) Ante, pp. 700, 701.

(*g*) Crompt. 6 b; 2 Hawk. P. C. c. 8, s. 6; ib. c. 10, s. 33; *The King v. King*, 3 Keb. 231, cites *The King v. Samois*, Hil. 16 & 17 Jac.; Lamb. Office of Constable, 16; 1 Mod. 13; *The Queen v. Wyatt*, 2 Lord Raym. 1193; 1 Salk. 175, 381; Fortesc. 127; 1 Bac. Abr. 683.

(*h*) 4 Inst. 265; *The King v. Bernard*, 2 Salk. 502; S. C. Comb. 416; *Rex v. Goudge*, 2 Str. 1213; *Rex v. Hewson*, 12 Mod. 180; *Rex v. Adlard*, 4 Barn. & Cress. 779; see also *The Queen v. Watkinson*, 10 Adol. & Ell. 290, in which case the Court of Queen's Bench adjudged, that the election of a chief constable for a wapentake, in the West Riding of Yorkshire, at a special petty sessions, was void, and that he was well appointed at a subsequent court of quarter sessions; (vide 2 & 3 Vict. c. 93, and 3 & 4 Vict. c. 88, for the establishment of county and

district constables by the authority of justices of the peace).

(*i*) Abbot v. Moore, 1 Mod. 13.

(*k*) 4 Inst. 267. And see two useful little works, the one called "The Exact Constable," published in 1680, and the other called "The Complete Constable," published in 1692; Lamb. Office of Constable, 5; 3 Keb. 231; Cro. Eliz. 375, 376, in *Sharrock v. Hannemer*; 2 Lord Raym. 1195; per Twisden, 1 Mod. 13; and see 10 Adol. & Ell. 292, in *The Queen v. Watkinson*, sup.

(*l*) 2 Hawk. P. C. c. 10, s. 33; *James v. Green*, 6 T. R. 232. *Sed qu.* and see extract from this stat. (13 Ed. 1, st. 2, c. 6) in the Appendix.

(*m*) 1 Salk. 381; 1 Lord Raym. 70; 1 Bulst. 174; Dalt. Just. ch. 28, p. 56; Lamb. 190.

(*n*) 6 T. R. 232.

recourse to analogous cases, at this day to appoint officers in places where none were in fact appointed before, if by law such an appointment may be made. In the case of vills, the court have in modern times frequently granted writs of mandamus to appoint overseers of the poor for the first time, as soon as the exigencies of the place required it."

But in *Abbott v. Moore* (o) Moreton said, "The Book of Villarum in the Exchequer sets out all the vills, and there cannot be a constablewick created at this day."

It has been the subject of great controversy whether the election of constable belongs of common right to the jury of the court leet, or to the steward (p); but it clearly appears that the right of election is in the jury (q).

A refusal to serve the office by a person not present at the time he is elected may be punished by amercement (r), but his act of contempt should be presented at the succeeding court (s).

When a constable or tithing-man chosen at the leet is present and refuses to be sworn, the steward may set a fine upon him (t); and when absent, or if the steward refuse to administer the oath to him (u), he is to go before a justice of the peace to be sworn (x). And a refusal to accept the office of constable is an indictable offence (y).

Should the leet neglect or refuse to choose a constable, the justices in sessions may appoint one (z), but only until the lord shall hold a court (a); and the sessions cannot discharge a constable appointed

(o) 1 Mod. 13; vide also, per Holt, 12 Mod. 181, in *Rex v. Hewson*; yet see *Village of Chorley* case, 1 Salk. 176, in which Holt said "a village and a constable are correlatives, but a hamlet has no constable." Vide also 12 Mod. 180, per Keiling, C. J., cited ib. 181.

(p) *The King v. Bernard*, ubi sup.

(q) *Fletcher v. Ingram*, 1 Salk. 175; S. C. 1 Lord Raym. 70; S. C. 5 Mod. 127; *The King v. Stevens*, T. Jones, 212. It should seem to be a settled principle that a corporation cannot elect a constable, except by special custom; *The King v. Bernard*, sup.; S. C. Skin. 669; *The King v. Routledge*, 2 Dougl. 536.

(r) Ante, p. 706, n. (d).

(s) *Fletcher v. Ingram*, sup.

(t) Ante, p. 705; and see *Doe & Ball*, Lex Man. App. 85, pl. 24; *The King v. Harpur*, 5 Mod. 96; *Griesley's case*, Sav. 93; 8 Co. 38.

(u) But the steward is compellable by *mandamus* to administer the oath to him; Comb. 285.

(x) *Rex v. Dr. Franchard*, 2 Str. 1149; *Rex v. Stevens*, ubi sup.; *Prigg's case*, Aleyn, 78; *Fletcher v. Ingram*, ubi sup.; but now see 5 & 6 Vict. c. 109, s. 21, in the Appendix, "for the Appointment and Payment of Parish Constables," abolishing the power of courts leet and the torn to appoint petty constables, head-boroughs, borsholders, tithingmen, or peace officers of the like description, for any parish, &c., within the limits of the act, except for the performance of duties unconnected with the preservation of the peace or with the execution of that act.

(y) Post, p. 718, ("Tithing-man.")

(z) *Abbot v. Moore*, 1 Mod. 13; 1 Bulst. 174.

(a) *Rex v. Davis & Goaling*, 2 Stra. 1050; and see *Rex v. Goudge*, ib. 1213;

at the leet, except under the provisions of the act of 13 and 14 Car. 2, c. 12, which directs that in case any constable shall die, or go out of the parish, any two justices may make and swear a new one, until the lord of the manor shall hold a court leet; and that if any officer shall continue above a year in his office, the justices in their quarter sessions may discharge him, and put another in his place, until the lord of the manor shall hold a court (b).

If a person be elected constable in a court leet by spleen, although the sessions cannot interfere, yet the Court of King's Bench will discharge such person, and the constable previously appointed must act until another be duly chosen and sworn (c).

Though it is generally considered that a person is not bound to attend two leets (d), yet when a leet is held for a manor within a hundred, it has been held that a tenant of the manor leet is not excused from serving the office of constable for the hundred; but that a custom for the exemption might be good (e).

Rex v. Stevens, T. Jones, 212; *Village of Chorley case*, 1 Salk. 176; S. C. Holt, 153; *Rex v. Hewson*, 12 Mod. 180. So where there is no leet, Lord Wentworth's case, 1 Bulst. 174; *Terry & Furnese*, 21 Car. 2, B. R.; *Scroggs*, 85. The justices should issue their summons, signifying to the party that he has been elected constable, and requiring him to take the oath, &c.; *Rex v. Halford*, Comb. 328, 329; and see *Prigg's case*, sup.

(b) 1 Bulst. 174; *Rex v. Davis & Gosling*, sup.; *Limington case*, 2 Stra. 798; *Rex v. Burden & Wakeford*, Barnard. B. R. 51; *Herson's case*, 5 Vin. Abr. 429, pl. 3; 6 Vin. 587, pl. 5. See extract from the above mentioned stat. in the Appendix.

(c) *The King v. Wright*, 1 Keb. 439; *Anon.* 12 Mod. 256.

A person elected constable who is not *idoneus*, (that is, not possessing honesty, knowledge and ability,) may be discharged by the leet, or by the Court of B. R.; *Griesley's case*, 8 Co. 41 b, 42 a; 1 Bulst. 174.

(d) *Ante*, p. 686; and see *Cro. Jac.* 584; *Rex v. Routledge*, 2 Dougl. 537; *Scroggs*, 2; *Hughes's Abr. tit. Avoury*, p. 170. But if a private leet has only a

partial jurisdiction, the resiants, as to all matters not cognizable there, must attend the superior leet, if any exist, otherwise the sheriff's tourn; 1 Roll. Abr. 542; *Scroggs*, 3.

It may be a good custom for the chief pledges of the inferior leet, and a limited number of resiants, to attend the grand leet; *Cro. Jac.* 584; *Scroggs*, 3. *Shepp.* (p. 7), says, "If a man dwell within the precinct of another leet, and have lands only in my leet, I may not compel him to do service to my leet; and yet if he dwell sometimes in one place and sometimes in another, and one of those places is within my leet, where he dwells at the time my leet is held, in this case and at this time he must do service at my leet, for he may do suit at both places at several times." And see the next note.

(e) *Rex v. King*, 3 Keb. 197, 230; *Keene's case*, 1 Freem. 348; *The Queen v. Jennings*, 11 Mod. 215; *The King v. Genge*, Cowp. 13.

In the above case of *Rex v. King*, Hale, C. J., said, "there was this difference between a leet in ancient borough, who in eyre appeared by four, and was always looked on as distinct from the hundred, and leet in upland towns is far different,

The office of a constable would appear to be a personal and not a pecuniary service, and therefore a person is not liable to serve the office unless he be resident in the parish (*f*); this, indeed, seems to be deducible from the custom of appointing constables at the court leet, and that practice in ancient times will help to show the description of persons liable to serve the office.

In the above case of *Rex v. Adlard*, Abbott, C. J., said, "it was argued, however, that a non-resident occupier may be appointed to this office, because it may be executed by deputy. I do not know that the appointee can substitute a deputy of his own authority alone, without the sanction or consent of some other authority; but supposing that he can, we think it by no means follows that he is therefore compellable to take upon him an office in its nature requiring personal services, especially where no necessity for his appointment is shown."

A barrister who regularly attends the courts at Westminster, and a practising attorney, are exempt from serving the office of constable; but a physician whose profession is private, and exercisable at his residence, has not a claim to a similar exemption (*g*).

It has, however, been said, that if a gentleman of quality be chosen constable of a town, which has sufficient persons besides to execute this office, and there be no special custom concerning it, perhaps he may be relieved by the Court of King's Bench (*h*).

From the nature of the office it seems inconsistent that it should be imposed upon women (*i*); and in *Prouse's case* (*k*), the Court of B. R.

and regularly he that owes suit to the leet owes none to the hundred, but by custom may do so." See as to the authority of that case, Cowp. 15.

"The privilege of having special customs derogating from the common law is in general denied to inferior places, such as upland towns, not being either cities or boroughs, and hamlets; though it is allowed to larger or more important districts, such as counties, manors, hundreds, honors, cities and boroughs." Co. Lit. 110 b. n. (2); and see 43 Ed. 3, 32 a.

(*f*) *Rex v. Adlard*, 4 Barn. & Cress. 779. Contrà as to the office of overseer; *Rex v. Hall*, 1 Barn. & Cress. 123; *Rex v. Poynder*, ib. 178.

(*g*) *Pordage's case*, 2 Keb. 578; S. C. 1 Mod. 22; S. C. 1 Sid. 431; vide *Herson's case*, 5 Vin. 429, 431, 6 Vin. 587,

where a person had been elected by the leet, and discharged by the sessions, because he was a master of arts; and the Court of B. R. granted a writ to compel him to be sworn at the leet.

A certificate under 10 & 11 Will. 3, c. 23, discharging persons from serving parish offices, is no exemption from being sworn constable at a court leet; *Birmingham case*, (*Rex v. Darbyshire*), 2 Burr. 1182.

(*h*) 2 Hawk. P. C. c. 10; 1 Bac. Abr. 686; *Rex v. Wright*, ubi sup.; but see *Pordage's case*, sup.

(*i*) Women were originally compellable to attend the toun; but women, as well as men, who had entered into religion, were excused by the stat. of Marlborough; ante, pp. 685, 695, 696.

(*k*) Cro. Car. 389.

held a custom that every one should be a constable or tithing-man, according to their several houses, to be bad, "for then a woman being an inhabitant in one of the said houses, it may come to her course to be constable, which the law will not permit."—But according to *Vane's case* (l), a custom in a vill where there are several houses, that every one shall be constable in turn, is good; for though it shall happen to the turn of a widow, she may hire one to serve, and then he who so serves is sworn, and he is the constable and not a deputy."

And in *The King v. Stubbs* (m), where a woman had been appointed an overseer, Ashhurst J. said, "the only question is, whether there be any thing in the nature of the office that should make a woman incompetent, and we think there is not. There are many instances where, in offices of a higher nature, they are held not to be disqualified, as in the case of the office of high-chamberlain, high constable, and marshal, and that of a common constable."

Tithing-man (*Thirdborough, &c.*)—The term tithing-man is more frequently used as synonymous with constable (n), though it often imports a subordinate or assistant constable; and the constable chosen for a manor sometimes has jurisdiction over distinct hamlets or vills, for which a particular constable or tithing-man is appointed (o).

We have just seen that a person elected constable or tithing-man, who refuses to be sworn, may be fined by the steward of the court leet, if the person so chosen be present, and that he may be amerced, if absent: it is also a settled principle that he may in either case be indicted at the assizes or quarter sessions (p). In all indictments for such offence it is proper to set forth the manner of every such election, before whom the court leet was holden, the notice and refusal, &c.; for it has been adjudged insufficient to say, in general terms, that the party was duly elected, or that he had notice thereof, without setting forth the special circumstances (q).

But the case of *Rex v. Brain* (r) is an authority, that a refusal to

(l) 1 Sid. 355; Hil. 19 & 20 Car. 2; 5 Vin. 432, pl. 5; and see Comb. 243.

(m) 2 T. R. 406.

(n) So also the term headborough, ante, p. 675, n. (q).

(o) See Birmingham case, (*Rex v. Darbyshire*), ubi sup.

(p) Ib.; 1 Ca. & Opin. 237; Prigg's case, Aleyn, 78; 12 Mod. 180; and see *Rex v. Lone*, 2 Stra. 920, which was an

indictment against a person who had been elected constable at a wardmote court for the city of London for refusing to accept the office; and see *Rex v. Brain*, 3 Barn. & Adolp. 614.

(q) Prigg's case, ubi sup.; 1 Burn's J. 496; *Rex v. Fuller*, 1 Bos. & Pul. 182.

(r) Suprà. See in Stark. Crim. Pleading, 2nd ed., p. 619, a precedent of an indictment against a person for not taking

take the oath of office is *primâ facie* evidence of a refusal by the party to take upon himself the execution of the office; and upon a motion in arrest of judgment in that case, the Court of B. R. held, that it was not necessary to state that the defendant had refused to be sworn, but that the offence was sufficiently charged in the indictment, by alleging that he obstinately and contemptuously refused to take upon himself the execution of the office, although duly required so to do.

Aleconners: Leather-Sealers.—These and other similar officers are frequently chosen at courts leet; and when the assize regulations were more highly valued, and consequently more rigidly enforced, the duties of those officers were deemed of no mean importance (*s*); but at the present day they are but as the shadow to the substance.

Hayward.—Sometimes this officer is elected and sworn in at the court leet, but it is generally, if not universally, where a leet is appended to a manor, and the court leet and court baron are held together; and when it exists as a totally distinct office from that of bailiff, which is more frequently but not always the case, it partakes more of a private than a public character, the duties of the office being principally the care of the boundary fences, impounding of estrays, and the like (*t*). It is, however, established in some places as

on himself the office of chief constable in a hundred, without any statement that he refused to be sworn.

(*s*) See the pleadings in *Randall v. Whiston*, in which a prescription was alleged for a leet and a market, and a custom for the ale-tasters chosen at the leet to cut any butter exposed to sale, which was deficient in weight; *Lex Man. App.* 93, pl. 27.

(*t*) In the case of *The King v. Bradshaw*, 7 Car. & Pa. (N. P.) 235, which was an indictment at the assizes at Gloucester, for rescuing cattle distrained by a hayward, not in the public lanes, but on private land, and in which the defendant was acquitted, Coleridge J. said, "it is not yet very distinctly shown, but we may take it, I think, that the duty of the hayward is to keep the lanes clear, by impounding stray cattle that he may find there; but that with respect to stray cattle found on private land, the hayward is only the private servant of the parties if

they send for him."—On its being suggested that there might be extensive commons in the parish, the learned judge added, "I should hold them to fall within the same rule as the lanes."—It was urged, that if the cattle had got to the pound, and had been rescued from it, the offence would be pound breach, and Mr. Justice Coleridge said, "Yes, but I take it that the office of hayward and of pound keeper may be distinct, and I believe that in some places they are so, and are held by different persons;" and added, "if the hayward had driven cattle to the pound which he had found straying in one of the lanes, I should hold that they were in the custody of the law from the first, and that the rescue of them on their way to the pound would be indictable; but in this case, till the cattle got to the pound, the hayward was merely acting as the servant of Mr. Stone, in whose lands the cattle were found."

Note.—The person who under 5 & 6

a public annual office, conferring a settlement under 3 Will. & Mary, c. 11, s. 6 (u).

SECTION V.

Of the Jury and their Presentments.

All offences cognizable in the leet, are to be inquired of and presented by suitors of the court (x), sworn and charged as a jury for that purpose, and consisting of not less than twelve (y); and when more than twelve are sworn, if twelve agree it is good enough (z); and it has been said, that the day being passed, the presentments in leet, where neither life nor freehold are concerned, cannot be shaken or questioned by any tribunal whatever (a); the reason for which is, that no process is there awardable against the party to compel him to answer (b); but although a presentment in leet, not affecting either life or freehold, is probably not traversable at the leet, yet it is settled that all presentments in leet may be removed by *certiorari* into the

Will. 4, c. 56, s. 4, is bound to supply the animal impounded with food, is the party at whose instance it is put in the pound; and *semble*, that the pound-keeper is not obliged to do so, although if he does it by the direction of the party impounding, they are to be considered as one; *Mason v. Newland*, 9 Car. & Pa. (N. P.) 576.

(u) *Rex v. Inhabitants of Whittlesea*, 4 T. R. 807; 3 Adol. & Ell. 153. The hog-ringer is a public officer, but the pinder is not necessarily so; *Rex v. Inhabitants of Clixby*, 4 Barn. & Adol. 155; *Rex v. Inhabitants of Newmarket St. Mary*, 3 Adol. & Ell. 153, 154. The office to gain a settlement must be annual; *Rex v. Inhabitants of Middlewich*, 3 Adol. & Ell. 156.

(x) But see ante, p. 702, 703, of the power of the steward to swear strangers, if there are not twelve suitors. And note, that in *The Rector of Wigan's case*, 2 Str. 1207, the in-burgesses of Wigan, who were bound by usage to act as jurors at the court leet of the lord of the manor, having refused to attend at two courts, so that no business could be done, the Court of B. R. granted a mandamus to enforce their attendance.

If all the resiants should refuse to perform their suit, so that no court could be held, a mandamus against the persons impanelled by the bailiff as jurors would seem to be the lord's proper remedy, as a distress cannot be taken for suit real, ante, p. 686. Should some of the resiants attend, but not a sufficient number to constitute a jury, see ante, pp. 702, 703, 706.

(y) *Scroggs*, 84, cites *Old Book of Entries*, 392; *Kitch.* 89, cites 6 Hen. 4, 1; 45 Ed. 3, 26; *Br. Leet*, 7; *Cutler v. Creswick*, 3 Keb. 362; and see *Kitch.* 13, who there says, "and it used very often to be fifteen, sixteen, or seventeen, of the jury in the leet."

(z) See *Shepp.* 20, who there says, "If the custom of the place be to make two or more juries, or one grand jury and divers petit juries, it is good to observe it."

(a) *Dy.* 13 b, pl. 64; 1 *Hawk. P. C.* 217, s. 72; *Scroggs*, 84; *Kitch.* 84, citing 19 Hen. 8, 11; 41 Ed. 3, 27; 2 R. 3, 12. But he also says in the same page, that though presentments by twelve shall not be traversed, yet you shall have recovery by writ of false presentment; cites 5 Ed. 3, 26; 21 Ed. 3; *Tit. Bar.* 271.

(b) *Scroggs*, 85.

Court of King's Bench, and there traversed (c). It is observable also that the jurisdiction of the court, if not the presentment itself (d), was at all times traversable (e); and that an averment may be made against a presentment made by less than twelve (f).

We have seen that by the act of 1 Eliz. c. 17, for preserving the spawn and fry of fish, the steward of a court leet is authorised to impanel a second jury to inquire of any concealments by the jury originally sworn, and that a penalty of 20s. is imposed on every juryman so wilfully concealing and making default in presentments (g). And it should seem that the perjury or wilful concealment of a jury in leet was always inquirable there by another jury, and punishable by fine (h).

If presentment be not made in leet of articles of which that court has cognizance, then they are to be presented in tourn (i); and if not there, then before the justices in eyre; and if not there, then in the King's Bench (k). So if there should be any neglect of presentments in the leet of a manor situate within a hundred to which a court leet be appended, the articles neglected to be inquired of in the manor leet would be inquirable of in the hundred leet (l).

(c) *Rex v. Roupell*, Cowp. 458; 2 Hawk. P. C. c. 10, s. 13, 76. In 11 Mod. 228, it is said, that where a presentment in a leet is removed by *certiorari*, the style of the court must be set out exactly, but that there needs no such nicety in pleading.

It is too late for a removal of the presentment, after the amercement has been estreated into the Duchy Court of Lancaster; ante, pp. 710, 711.

(d) In *Dyer's Reports*, 13 b, pl. 64, Fitzherbert cited Britton as an authority, that every presentment in leet and tourn is traversable; Cowp. 460, per Aston, J. It is to be recollected, that in an action, founded on the mere right, as in replevin, or in debt for an amercement, the presentment is clearly traversable; Carth. 73, 74; 1 Lord Raym. 470.

(e) *Br. Presentment in Court*, 1, cites 41 Ed. 3, 26; Rita. 132, 143; and see Keilw. 66, 67; Scroggs, 85; 2 Hawk. P. C. c. 10, s. 76.

(f) Ante, p. 720.

(g) Ante, p. 692, 693. And see this stat. in the Appendix.

(h) *Mirr. c. 1*, s. 17, pp. 520, 521; 17 Ed. 2; *Br. Custom*, 3; *Fitz. Abr. Cus-*

tom, 1; 1 Roll. Abr. 560, pl. 13, 14. Ante, p. 693, n. (s).

But by 6 Geo. 4, c. 50, it is enacted, that "it shall not be lawful either for the king or any one on his behalf, or for any party or parties in any case whatsoever, to commence and prosecute any writ of attain against any jury or jurors for the verdict by them given, or against the party or parties who shall have judgment upon such verdict; and that no inquest shall be taken to inquire of the concealments of other inquests, but that all such attainments and inquests shall henceforth cease, become void and be utterly abolished, any law, statute or usage to the contrary notwithstanding."

(i) *Loader v. Samuel*, Cro. Jac. 551; *Kitch. 84*; ante, pp. 689, 716. But the neglect is to be pleaded and cannot be presumed; 2 Hawk. P. C. c. 10, s. 64.

(k) *Kitch. 84*, cites 41 Ed. 3, 27; 10 Hen. 4, 4.

(l) *Cook v. Stubbs*, Cro. Jac. 583; *Rex v. King*, 3 Keb. 197, 230, 251; ante, p. 689, (n.). The neglect of the lord of a manor leet is not punishable in the hundred leet, but in the eyre; *Br. Leet*, 13, cites 21 Ed. 3, 3, 4.

The jurisdiction of a leet jury, like that of a grand jury, is confined to things done or neglected to be done since the last court (*m*); and it was decided in the case of *Davidson & Moscrop* (*n*), that a custom for the jurors to be charged and sworn at one court, to inquire and present and to return such their presentments at the then *next court*, was bad in law (*o*).

The case of *Moore v. Wickers* (*p*) has been looked upon as an authority against the validity of a custom for the jury of a leet to enter into shops for examining weights and measures, and to destroy any such that might be found to be deficient: but the author is about to show, by an extract from the judgment of the court of B. R. in *Willcock v. Windsor*, that too much importance has been attached to the observation made by Probyn, J., in the above case of *Moore & Wickers* (*q*).

The case of *Willcock v. Windsor* (*r*) was an action of trespass in the court of King's Bench for breaking and entering the plaintiff's dwelling house and yard in the parish of Saint James, Clerkenwell, and breaking, bruising, perforating and destroying divers pots of the plaintiff there found, &c. Pleas,—first, the general issue; secondly, that the defendant *Windsor* was the bailiff of a prescriptive court leet holden in and for the manor of Clerkenwell, otherwise called Saint John's, Clerkenwell, on Ascension day in every year; that the other defendants, being inhabitants of the manor and suitors of the court, were, at the said court holden on Ascension day, the 28th of May, 1829, sworn as a jury for the manor to inquire and make true presentment of all such matters and things as should be given them in charge, or appear to be the object of their inquiry, and particularly according to the custom of the said manor from time immemorial to examine weights and measures, and see they were just and according

(*m*) Keilw. 66 b.

(*n*) 2 East, 56; 3 Barn. & Adol. 49.

(*o*) But it is said that in some manors the jury continue in office for a whole year; Rits. 9. And see *Wicker & Norris*, cited 1 Wils. 250.

(*p*) Andr. 47, 191. But note, in the manor of St. Giles in the Fields, Bloomsbury, there is a custom for six aleconners to be appointed by the *steward*, and for them or the major part of them to search into and weigh all loaves not exceeding three penny loaves or half-quartern loaves, and to present all bakers whose bread is found wanting in due weight, or who should hinder such aleconners in the execution of the duties of their office. See the *Duke of Bedford v. Alcock*, 1

Wils. 248, which was an action of debt for an amercement set on a baker within the above manor, who refused to permit the aleconners to weigh his bread, and wherein it was held, that a count upon a *mutuatus* might be joined with counts in debt for an amercement in a court leet; 2 Bro. Ent. 83, 84, was cited as an authority for it. And see *Palmer v. Barfoot*, Lutw. 440. Vide also *Vaughton v. Atwood* and others, 1 Mod. 202; S C. (*Vaughan v. Wood*), 2 Mod. 56; and the notice taken of it in the judgment delivered by Lord Tenterden in *Willcock & Windsor*, post, p. 725.

(*q*) Post, p. 725.

(*r*) 3 Barn. & Adol. 48.

to the legal standards in that behalf; and for the purpose of making such inquiry and examination the said court was then and there, according to the usage and custom of the said manor, adjourned; and the said jurors so sworn as aforesaid had a day given them to bring in their presentments until the 15th of December in the said year 1829; and it was averred that there was and had been within the manor from time immemorial an ancient and laudable custom, viz., "that the jurors of the jury of the said court leet to the number of twelve or more for the time being, after they were and are so sworn as aforesaid, and during the adjournment of the said court, from time whereof, &c., have entered and have been used and accustomed to enter, and of right ought, &c, and still of right ought, &c., with or without the bailiff of the said manor for the time being, into any dwelling house with the appurtenances of and belonging to any person being an inhabitant and resiant within the said manor, and selling goods there by weights and measures, and having weights or measures in his custody therein used and to be used by him in and for the sale of goods within the said manor, at seasonable times in the day time by the outer door or doors of such dwelling house, with the appurtenances, the same being respectively open, for the purpose of searching for and examining and to search for and examine such weights or measures, and to see that they were and are just and according to the legal standard in that behalf; and if upon examination any of the said weights or measures have been or shall be found by the said jurors to be false, deceitful or deficient, and not according to the legal standards in that behalf, then the said jurors for all the time aforesaid have broken and destroyed, and have used and been accustomed to break and destroy, and of right ought, &c., and still of right ought, &c., such last mentioned weights or measures so being false, deceitful or deficient, to prevent the same from being afterwards fraudulently, deceitfully and unlawfully used within the said manor." The plea then stated that before and at the time when, &c., the plaintiff was a resiant within the manor, and carried on the business of an ale-house keeper there in the said dwelling house and yard; that the pots mentioned in the declaration were measures used by him in the sale of beer and ale there; that *Windsor* being bailiff of the manor, and the other defendants being the leet jury, in the execution of their duty during the said adjournment, entered into the said dwelling house at a seasonable time by the outer doors, which were then open, to search for and examine measures, and did examine the measures in question, (they not having been previously examined by the defendants,) and upon such examination the said jurors did find that the same were false, deceitful, deficient and less than the legal standard; wherefore the said jurors, according to the custom, broke and destroyed them

to prevent their being afterwards fraudulently used within the manor, as they the defendants lawfully might, &c. ; and they traversed being guilty in any place out of the manor. There were other pleas setting up a similar justification. The plaintiff demurred generally to the special pleas. The defendants joined in the demurrer.

In support of the demurrer it was contended, that a custom to break deficient measures could not be valid, inasmuch as the duty of the jury was only to examine and present, and that by breaking the vessels they destroyed that which ought regularly to be the evidence for or against their presentment ; that it did not appear on the pleadings that the measures were, but only that they were found by the jury to be defective ; and lastly that the adjournment stated in the pleadings was unreasonable, and could not be grounded on valid custom.

The following is a copy of the judgment of the court delivered by Lord Tenterden, C. J., as reported by Messrs. Barnewall and Adolphus.

“The demurrer in this case is founded on two objections to the several pleas, the one to the custom set forth (which his Lordship read as stated in the pleadings), the other to the adjournment of the court, and the time given to the jury to bring in their presentments until the 15th day of December, 1829, which was said to be an unreasonable length of time on the face of the plea, the court having been holden on the 28th day of May in the same year. The objection to the custom was principally founded on the case of *Moore v. Wickers* (Andr. 47, 191). In that case, which was an action of debt in the court leet of the manor of *Stepney* to recover the amount of an amercia-ment affeered, the plaintiff declared that he was lord of the manor, and prescribed for a court leet, and set out a custom that the jurors sworn, and charged at any such leet to present, have presented and used at such leet to present, after their being sworn, all such things as have been before or after their being sworn presentable, and that such jury had been used to be adjourned, &c. The plaintiff further declared that the defendant was a cheesemonger within the jurisdiction, and obstructed the jurors then in the execution of their duty from entering into his shop and trying his weights and balances ; that the jury at a subsequent court presented this obstruction, whereupon the defendant was amerced, and the amercia-ment affeered to 4*l.* 19*s.* There was a verdict for the plaintiff, and a writ of error brought wherein several errors were assigned, of which the second was that the presentment was ill, because the jury have no authority to enter into the shops of persons to examine their weights and measures ; if the jury of a leet have such a power it must be by custom, and none was set out on that record ; and if it was, it was a question whether it would be reasonable. On the argument the judges threw out their several

impressions on the points raised, the only one of which relating to the present question is that of Probyn, J., who is reported to have said, that a custom for the jury of a leet to enter into houses for examining weights and measures, they being only sworn to present, he thought would not be good. But the case was adjourned, all the court intimating an opinion that the proceeding was erroneous in not setting out the time of the obstruction, and afterwards when the case was stirred again, no one appearing for the defendant in error, the judgment was reversed, the court saying there was a strong objection in the case, but not intimating what it was. We do not consider that decision any authority against the validity of the custom here, because there no such custom was pleaded, and there was no judgment of the court against it. On the other hand there is a case in which a similar custom was adjudged good. In *Vaughan v. Attwood* and others (1 Mod. 202), the custom justified under was, that the homage used to choose every year two surveyors to take care that no unwholesome victuals were sold within the manor, and that they were sworn to execute their office truly for the space of one year, and that they had power to destroy whatever corrupt victuals they found exposed to sale. The plea then stated that the defendants being chosen surveyors and sworn to execute the office truly, examining the plaintiff's meat, found a side of beef corrupt and unwholesome, and that therefore they took it away and burned it. North, C. J., it seems, doubted; but the other three judges said, 'It is a good reasonable custom; it is to prevent evil, and laws for prevention are better than laws for punishment. As for the great power it seems to allow to these surveyors, it is at their own peril if they destroy any victuals that are not really corrupt, for in an action if they justify by virtue of the custom, the plaintiff may take issue that the victuals were not corrupt. But here the plaintiff has confessed it by the demurrer.' We think the reasons alleged in support of that custom were sound and good, and for the like reasons we hold the present custom to be valid. Such customs prevail in many manors, and they are in our opinion very useful to the public, as affording protection against fraud and deceit. They are also recognised by the statute 35 Geo. 3, c. 102, s. 6, and 55 Geo. 3, c. 43, s. 12, two statutes making provision for preventing the use of false weights and measures, and containing a proviso that they shall not lessen the authority of persons appointed at a leet for the examining, breaking and destroying weights or balances or measures.

"An objection was taken with reference to this part of the case, that the averment was not that the plaintiff's pots were, in fact, false, deceitful and deficient, and not according to but less than the legal standard, but only that the jury found them to be so; and for

this *Palmer v. Barfoot* (Lutw. 440) may be cited. But in that case the custom alleged was, that the inspectors should seize, and take as forfeited the bread of foreign bakers, if it should not be of just weight, or should be deceitfully or insufficiently made or baked; and the averment was that the defendant found it, on view and inspection, to be insufficiently baked. The justification, therefore, did not bring the case within the words of the custom, and the plea was holden to be bad, without the court throwing out any opinion against the custom itself, which seems to have been acquiesced in as good. But here the custom laid and the justification coincide. The custom is, if any of the said weights and measures shall be found to be false, &c., and the averment corresponds. We think also that the objection arising out of the adjournment cannot prevail. It is averred to have been made according to the usage and custom of the said manor, and nothing appears to prove that the length of time for which it was made was of necessity unreasonable, or disproportioned to the occasion. In large and populous manors, such as this of *Clerkenwell*, it would be impossible for a jury to execute this function of examining all weights and measures within a day, or even within a short space of time. And adjournment, therefore, must in such cases be necessary, and the period of it must be governed by circumstances, and in some degree be left to the discretion of the court leet, that discretion being, of course, to be exercised duly, and subject to control. The case of *Davidson v. Moscrop*, (2 East, 56,) is very distinguishable from the present. All that was decided there was, that a custom for the jurors to be charged and sworn at one court to inquire and present, and to return such their presentments at the then *next court*, was bad. But here the adjournment is of the same court; and if the jury present the plaintiff's offence on the adjournment day, the presentment will not be made at another court. We are of opinion, therefore, that there must be judgment for the defendants."

A custom for the jury of the court leet to examine weights and measures, and seize them if defective, also exists in the manor of *Stepney*, and was recognized in the late case of *Sheppard v. Hall* and three others (s). There the four defendants pleaded that they with divers, to wit, twenty others, were duly sworn as a leet jury of the manor court, to inquire of weights, &c., according to the custom, and that the jury were authorized by the custom to seize and carry away defective weights, &c., and to enter shops within the manor by day for the purpose of their inquiry; and they alleged that they *being on such jury* examined and seized the plaintiff's weights, &c., which they found defective. Replication, *de injuriâ*, whereupon issue was joined.

At the trial before Lord Tenterden, it appeared in evidence that only five of the jury were in the plaintiff's shop when the examination and seizure took place, the rest being in another shop in the same street. It was contended on the behalf of the plaintiff, that upon this evidence it did not appear that twelve jurors were together, when the proceedings were taken; but Lord Tenterden was of opinion that the objection, if it arose, was upon the record; and he therefore left to the jury, as the only question of fact in the case, whether or not the defendants took away any weights, &c., that were not defective, and a verdict was found for the defendants. A rule was afterwards obtained, calling upon them to show cause why judgment should not be entered for the plaintiff *non obstante veredicto*, or a new trial had.

And upon cause being shown, it was argued on the part of the defendants that, admitting the averment to be ambiguous, and that it was not alleged with sufficient precision that the defendants and the rest of the jury were acting together, yet that there was a constructive presence of the jurors who were outside the shop, and that the defective statement was cured by verdict, for which *Lord Huntingtower v. Gardiner* (t) and other authorities were cited. The Court held that the objection was a valid one on the record, and that the defendants, as four only of the jury, did not bring themselves within the custom relied upon; and Mr. Justice Patteson was of opinion that there was no ambiguity in the expression "being on such jury," and that the question of an ambiguous expression being cured by verdict did not properly arise in *Lord Huntingtower & Gardiner*. Judgment for the plaintiff *non obstante veredicto*.

Every presentment in leet must be certain, and state the precise day of holding the court (u), and before whom it was held (x); and should set forth the power under which the court acts, that is, whether it exists under a grant or by prescription (y); though this does not appear to be absolutely essential (z). In *Lawson v. Hare* (u), in replevin, it was held on demurrer, that the leet being claimed out of the hundred, it was sufficient for the defendant to allege that he was seised of the hundred, without showing any other title, though it would have been otherwise if the hundred itself had been in question.

In the case of a nuisance, it must be shown at what place it was committed, and that such place is within the jurisdiction of the court (b); and the presentment must conclude to the common nui-

(t) 1 Barn. & Cress. 297.

(u) Dacon's case, Vent. 107; S. C. 2 Saund. 290.

(x) That is, *coram seneschallo*; 3 Keb. 251.

(y) *Jerrat v. Caldwell*, Cro. Jac. 184.

(z) *Scroggs*, 8; *Rex v. Gilbert*, 1 Salk. 200; S. C. 12 Mod. 4.

(a) 2 Leo. 74.

(b) Br. Leet, 33, cites 5 Hen. 7, 2; and see *Keilw.* 89 a, pl. 9.

sance of all the king's subjects (c); for it is not sufficient to say *ad nocumentum diversorum* (d), or *ad nocumentum habitantium* (e), as the leet cannot amerce for a particular trespass or injury to the lord of the manor, or any other person, where an action will lie to recover damages, but for public nuisances only (f).

And in the case of presentments for stopping the common highways, the *locus ad quem*, as well as the *locus a quo*, should be stated (g).

The proper mode of inquiring of felonies in leet is by indictment or inquisition, by roll indented under the seals of the jurors, to be afterwards certified to the king's justices at the next gaol delivery (h).

The inquisition of a leet jury in cases of felony is in nature of a bill of indictment by the grand jury; but probably, before the introduction of the petit jury, the finding of the leet jury was conclusive (i).

According to the Mirror (k), all presentments in a court leet are to be sealed with the seals of the jurors, so that none may do fraud by increasing or diminishing them; yet it would seem that it is not necessary that ordinary presentments in leet should be either sealed or indented.

In the case of *Sir George Colebrook v. Elliott* (l), the offence charged in the presentment was the defendant's having in his custody, and exposing to sale, a loaf of bread not of the weight required by 3 Geo. 3, c. 11, which act did not fix the price, and on that account the Court of B. R. held that the offence was not cognizable in the leet, the assize not having been broken. An objection had been taken to the presentment in this case, that it was neither sealed nor indented; but the court were agreed that the latter objection was not maintainable.

(c) Anon., 1 Vent. 26; *Prat v. Stearn*, Cro. Jac. 382; 2 Keb. 500; *Sir T. Raym.* 160.

(d) *Hughs v. Bishop of London*, 3 Keb. 106; *Rex v. Ayers*, 2 Keb. 139.

(e) Mo. 356.

(f) *Rex v. Dickenson*, 1 Saund. 135; 2 Keb. 613; *Lex Man. App. pl. 30*; ante, p. 707.

(g) *Ayerl's case*, 3 Keb. 644. But objections on account of informalities in presentment for not repairing a common

highway are not favoured; *Rex v. Inhabitants of Limehouse*, 2 Sho. 455.

(h) See 1 Ed. 3, st. 2, c. 17; *Crompt. J. P.* 151. Presentment of felony in leet, and the steward certifies it to the justices at the next sessions by *indenture*, this shall serve for indictment; *Br. Indictm. 1*, cites 27 Hen. 8, 2; *ib. Leet 1*, cites S. C.

(i) *Rits.* 15, 16.

(k) c. 1, s. 17.

(l) 3 Burr. 1860.

Of Offences presentable only, and Offences both presentable and punishable in the Court Leet.

In former ages most offences were punished by imprisonment, or by a mulct or pecuniary fine, which payment is supposed in many cases to have been a fixed sum proportionate to the magnitude of the crime, or the degree in society of the person injured (*m*); but even in the reign of William the Conqueror many offences were punished with death or mutilation (*n*). Indeed the punishment of death may be traced back to the Anglo-Saxon æra (*o*); for it is recorded of King Alfred that he hanged thirty unjust judges in one year, who are said to have been the judges in the tourns, ealdermen of counties, or their deputies the sheriffs (*p*).

The court leet never could arraign and *deliver* persons indicted for felony (*q*), nor inquire of any felonies which were not such at common law; in proportion therefore as the severity of our criminal code increased, the number of offences punishable in the court leet of necessity diminished.

The offences which the leet is to inquire of, and afterwards to certify to the king's justices, at the next assizes or gaol delivery of the county (*r*), are treason, (but which is inquirable *as felony only*,) murder, rape (*s*), manslaughter, arson, burglary, sacrilege, grand and petit larceny (*t*), rescue, accessaries, voluntary escape, and every offence which was deemed felony at common law; and also negligent escape (*u*).

There are, however, various offences which are not only inquirable in the court leet, but also punishable there by fine, penalty, &c., such as the refusal to accept or neglect to execute certain public offices, nuisances, disturbances, breach of assise, forestalling, the non-observance of certain acts enjoined, and the commission of others pro-

(*m*) See Sulliv. F. L. 275.

(*n*) 1 Reeve's Hist. Engl. L. 16, 33, 193.

(*o*) Treason, murder, rape, and robbery, were punished as capital offences, but mutilation was afterwards substituted as the punishment for rape; which by 3 Edw. 1, was punished as a trespass only, but was again made felony by 13 Edw. 1, and benefit of clergy was taken away by 18 Eliz; Sulliv. 275; Bract. 3, c. 28; post, Articles inquirable in Leet, tit. "Rape."

(*p*) Sulliv. 275.

(*q*) Br. Franchises, 5, cites 8 Hen. 4, 18; ib. Leet, 11, cites S. C.

(*r*) Ante, p. 728,

(*s*) But see as to murder and rape, sup., n. (*o*); post, Articles inquirable in Leet, "Murder," "Rape."

(*t*) The distinction between grand and petit larceny no longer exists, see 7 & 8 Geo. 4, c. 29.

(*u*) In cases of felony, the jury are also to inquire what lands and tenements, and also what goods and chattels, the felon had at the time the felony was committed; the former escheat to the lord, subject to the king's year and day waste, (ante, p. 632;) and the latter are forfeited to the king, and sometimes to the lord of the leet, by grant or prescription, ante, pp. 368, n. (*c*); 639, n. (*o*).

hibited by particular statutes, &c.; and the author proposes to exhibit in alphabetical order the various matters which are to be inquired of in the court leet, referring to some authorities under each title, and avoiding any animadversion on the antiquated nature of several of the articles; conceiving that this arrangement may best assist the steward, who, under very particular circumstances, may think it desirable in his charge to the jury, to detail the various offences and other matters which are properly cognizable in the court leet.

ARTICLES

INQUIRABLE IN THE COURT LEET^(x).

Accessaries.—Kitch. 41 (receivers of felons); Jenk. P. C. 12 (accessaries before and accessaries after the fact); Shepp. 41 (accessaries before or after the offence). And see Pow. 76.

Adultery.—3 Inst. 206 (“in ancient times adultery and fornication were punished by fine and imprisonment, and inquirable in tourns and leets by the name of Letherwite”). And see 2 Inst. 488; Jenk. P. C. 10 (adultery is to be inquired of as felony). [But indictment lies at common law for adultery; Salk. 552.]

Affray.—See *Assault and Battery*. [Prescription in leet for every affray or bloodshed, to pay so much, and to distrain for it, and sell the distress is good, for it is the king’s court; Br. Prescrip. 106, cites 11 Hen. 7, 13, 14.]

Aleconners, or Ale-tasters.—See *Vaughton v. Atwood et al.*, 1 Mod. 202. And see post, *Officers*.

Alehouse-keeper.—Jenk. P. C. 16, 17 (selling beer or ale without license:—alehouse-keeper, licensed or unlicensed, selling beer or ale in unsealed measures, or less than full measure: encouraging tiplers or suspicious persons: not furnishing accommodation to strangers); Kitch. 45 (bread and beer is inquirable in the leet, and not in the tourn of the sheriff, but see 18 Hen. 6, 13); Jenk. P. C. 17 (if any alehouse-keeper shall suffer any persons to sit tipling in his house above the space of an hour, he forfeits 10s. and the tipler ten groats apiece); ib. (if any alehouse-keeper suffer any one to be drunk in his house, the drunkard forfeits 5s., the alehouse-keeper 10s.; and see Greenw. 293; Shepp. 54 (if a tipler sell not by measures allowed and sealed, he may be punished by the common law or upon the statute). And see Kitch. 21; post, *Tiplers*.

(x) Vide as to articles inquirable in leet, a treatise by I. Wilkinson concerning the offices of coroner and sheriff, and on the

method of keeping a court leet, court baron, hundred court, &c., published in 1620.

Allegiance.—Jenk. P. C. 20 (if all deciners be present).—Mirr. c. 1, s. 17; Britt. c. 29; Flet. 2, c. 52, s. 6, 17 (whether all above twelve years of age have been put in dozein [dizein,] and sworn fealty to the king; and of the receivers of others). And see Pow. 19, 23, 80; Shepp. 42; post, *Chief Pledges*.

Approvers.—Flet. 2, c. 53; Britt. c. 29 (those who shall have retained approvers). [For the signification of the term "Approver," vide 3 Inst. 129, c. 56.]

Arson.—Jenk. P. C. 11 (burning of a house or barn adjoining to a house); Kitch. 48 (if one feloniously in the night burn a barn adjoining to a house, 11 Hen. 7, 1); Shepp. 40 (burning of houses or barns of corn, out-houses adjoining to dwelling-houses in the night); Greenw. 288 (if any one feloniously burn any dwelling-house, or barns, or stacks, or mows of corn in the night season, it is felony at the common law); Pow. 74 (feloniously burning any dwelling-house, or any barn adjoining, or any stacks or mows of corn near any barn or dwelling-house in the night). And see stat. Wallie.

Artificers.—Jenk. P. C. 19 (if any one shall use any art, mystery, or manual occupation, having not been brought up apprentice thereunto by the space of seven years).

Assault and Battery.—The Stat. for view of Frankpledge (y) 18 Edw. 2, 1325 (of bloodshed, and of frays made); Kitch. 44, 73 (assault upon a person only is not inquirable and punishable by presentment in leet, but bloodshed is, cites 8 Edw. 4, 5; 4 Hen. 6, 9; 11 Hen. 6, 29; 22 Edw. 4, 22). And see Stat. Wall.; Pow. 89; Kitch. 73 (if any affray were so that the king's people were disturbed, for that is more than particular, 1 R. 3, 1); Jenk. P. C. 21 (common disturbances of the peace, that is to be presented); Scroggs, 7 (it seems reasonable that private or particular assaults and batteries, though there be no bloodshed, should be inquirable in leet. Bacon, J. and Walter thought they might, Rolle contrâ, Pas. 24 Car. 1, B. R.) (x).

Assise.—Stat. 18 Edw. 2; Stat. Wall. (of the assise of bread and ale broken; Britt. c. 29; Flet. 2, c. 52, s. 21, 27; Kitch. 21, 42, 45; Jenk. P. C. 24; Shepp. 52; Powell, 109; Scroggs, 10; Mirr. c. 1,

(y) Vide Ritson on Courts Leet, p. 56 (n. d.) who says, "this has been denied to be a statute; and with some reason, as it seems to be nothing more than a sheriff or steward's charge in the tourn or leet."

(x) A steward may fine for an assault in leet (*sedente curiâ*) in disturbance and

contempt of the court, but an indictment there of assault and battery without bloodshed is not good, for such indictment before the sheriff in his tourn was adjudged void; Dy. 233 b, ca. 14, cites Hen. 13, Ed. 4, 10; ante, pp. 702, 703, 704.

s. 17 (breach of assise). Vide also Co. Litt. s. 234; 3 Burr. 1862, 1863, 1864 ("the setting the assise, which must fix both price and weight, is the basis of the leet jurisdiction, and it cannot take cognizance of an offence created by act of parliament, regulating the weight, &c., as in the 3 Geo. 3, c. 11"). See 51 Hen. 3, st. 1; 8 Anne, c. 18, repealing the last act; stat. 31 Geo. 2, c. 29, repealing the laws respecting the assise of bread, but confirming the principle of fixing both price and weight, and saving the right or custom of lords of leet franchises, to inquire of and punish the breach of assise of bread. Vide also ante, pp. 728, 729.

Barretors.—See *Scolds*.

Bows and Arrows.—[By 33 Hen. 8, c. 9, (see Appendix,) for the encouragement of archery, and debarring unlawful games, every male subject was compellable to have a bow and arrows; and the stewards of leets and law-days were authorised to inquire of the offences mentioned in the act. See Kitch. 27, 28.] Vide also *Cross Bows*, post.

Brothels; (Disorderly Houses).—Kitch. 20 (keeping houses of ill-fame is a cause to break the peace, and a vice which corrupteth the state). And see Jenk. P. C. 22; Scroggs, 20; ib., (you are to inquire of all unlicensed alehouses, and present the offenders; and if any inns or alehouses have a license, yet you are to inquire if they keep good order in their houses, otherwise you are to present and punish the offenders).

Burglary.—Stat. 18 Edw. 2 (of breakers of houses, and of their receivers). And see Britt. c. 29; Flet. 2, c. 52; Kitch. 17; Jenk. P. C. 11; Shepp. 40; Pow. 75.

Chief Pledges.—Stat. 18 Edw. 2 (and if all the chief pledges be come, as they ought to come, and which not); Kitch. 19 (if the capital pledges appear); Pow. 80 (if the capital or chief pledges of every decennary appear: these pledges correspond with the tithing-men of the present day); Britt. c. 29; Flet. 2, c. 52, s. 5; Mirr. c. 1, s. 17 (if all the chief pledges be come to the view, and if they have their dozeins [*dizeins*, ante, p. 676,] entire).

Church.—Jenk. P. C. 19 (if any person of the age of sixteen years or more shall wilfully absent himself from church or chapel, he shall forfeit for every month 20*l.*, one third to the lord protector [the crown], another third to the poor of the parish, and the other third to the informer).

Clippers, &c. of Money.—Stat. 18 Edw. 2 (of clippers and forgers of money); Kitch. 43 (clipping of gold and silver is inquirable, cites 22 Edw. 4, 22); ib. 16. And see Jenk. P. C. 8.

Clothes: Clothiers.—Stat. 18 Edw. 2 (of cloth-sellers and curriers of

leather dwelling out of merchant towns); *Mirr. c. 1, s. 17* (of sellers of old clothes, dwelling out of great towns.) *Vide 4 Edw. 4, c. 1, post, Appendix.*

Coin.—See *Treason.*

Common.—[*Vide act 32 Hen. 8, c. 13, post, Appendix;*] *Kitch. 23, 32.* [*N. B. Inclosures of, and encroachments on, commons, are not public injuries, and therefore cannot be inquired of in leet; Scroggs, 86; Cro. Eliz. 448; Lex Man. 141.*]

Conspiracies.—*Kitch. 27* (if any butcher, baker, &c., conspire not to sell but at certain prices, cites *2 Edw. 6, c. 15*); *ib.*; *Jenk. P. C. 28* (if workmen or labourers conspire not to work but at certain prices, or not to do but certain labour, &c., the latter cites *24 Hen. 8, c. 12*); *Mirr. c. 1, s. 17* (all manner of conspiracies). [And see the above stat. of *2 & 3 Edw. 6, c. 15, post, Appendix.*]

Constables.—See *post, Officers.*

Cottages.—[By stat. *31 Eliz. c. 7* (said to have been passed to prevent the lords of great wastes from converting the whole into building purposes, ante, pt. 1, p. 88), a penalty of *10l.* is inflicted for erecting or converting a building into a cottage, without laying four acres of land to it of the party's own freehold; and *40s.* a month for continuing such cottage; and justices of the peace and lords of leet are authorised to inquire of and hear and determine all offences against the act, as well by indictment as otherwise by presentment or information, and to award execution for the forfeitures by *fieri facias, elegit, capias*, or otherwise, as the cause should require. *Sed vide s. 5*, by which certain cottages are excepted out of the provisions of the act. And see *s. 6* of the same act, against receiving inmates into such cottages. And *n. to 21 Jac. 1, c. 21, post, Appendix; Jenk. P. C. 32, 33; Pow. 152.*]

Crossbows & Handguns.—[See the prohibitory acts *33 Hen. 8, c. 6*, and *c. 9, post, Appendix; Kitch. 28, 29, 42.*]

Crow-nets.—[See *24 Hen. 8, c. 10; Kitch. 30, 43.*] *Jenk. P. C. 29* (towns to be amerced for not providing nets for destroying crows and rooks); *Com. Dig. Leet, 167 (L. 14)* (occupiers of land to be amerced at the discretion of the steward, and he ought to give this act in charge.—[*Note, this part of the act was repealed by the stat. 8 Eliz. c. 15, and the repeal continued by several other acts which are all expired, whereby this clause seems to be now in force*]).

Curriers.—[See Stat. *1 Jac. 1, c. 22*, repealed by *48 Geo. 3, c. 60, post, Appendix; Mirr. c. 1, s. 17; Jenk. P. C. 28; Kitch. 29.*]

Deciners.—See *post, Suitors.*

Deer.—*Jenk. P. C. 12; Kitch. 18, 100; Pow. 73* (taking of tame deer and swans marked is also felony); *Jenk. P. C. 29; Kitch. 31;*

Pow. 150 (hunters and stealers of deer are here to be inquired of and presented).

Disturbers.—See post, *Noctivagancy*.

Doves: (Dovecotes.)—Stat. 18 Edw. 2 (of such as take doves in winter by door-falls or engines). Vide also Stat. Wall.; Shepp. 60; Kitch. 17 (taking doves in the dove-house in the night is felony and inquirable in leet, but not where they are taken in their roost out of the dove-house, cites Stamf. 25 C. 22 Ass. 29; 18 Hen. 8, 2). And see Pow. 64; Jenk. P. C. 11 (taking of doves out of a dove-house in the night time is felony); Britt. c. 29 (of the takers of another's doves.) (a).

Dozeins: (Dizeins.)—Stat. 18 Edw. 2 ("and if all the dozeins be in the assise of our lord the king, and which not, and who received them"). Ante, *Chief Pledges*.

Drunkenness.—See post, *Tiplers*.

Escape.—Stat. 18 Edw. 2 (of persons imprisoned, and after let go without mainprize); ib. (of escapes of thieves or felons); Kitch. 18, citing Stamf. 32 I. 33 B. (*voluntary*, i. e. if a person after taking another for felony allows him to escape, this is felony: *negligent*, i. e. if a person is arrested for felony, and afterwards escape through the negligence, though against the will, of his keeper, and if he be not freshly pursued and taken before the keeper lose sight of him, that is fineable, and inquirable in leet). Vide also Jenk. P. C. 12; Pow. 77; Greenw. 288; 1 Hale, H. P. C. 603 ("an escape is presentable in a leet, but they cannot set a common fine or amercement there, but it ought to be sent to the next *Eyre*, &c., or may be removed into the King's Bench by *certiorari*, and there the common fine or amercement set, and this by the statute of Westm. 1, c. 3").

Escheat.—See post *Forfeiture*.

Estray.—Kitch. 22, ("if any estray be it is inquirable"). And see Shepp. 12, 43; ante, p. 647 et seq.

(a) It was held in *Bowlston v. Hardy*, Cro. Eliz. 548, (S. C. 5 Co. 104 b, Mo. 420, 453,) that dovecotes could be erected by the lord of a manor only, and that if a private person erected a dovecote, he was punishable in leet for a nuisance, but that an action on the case did not lie; and see Bond's case, Mo. 238, which supposes the right to exist not only in the lord of a manor, but in the parson of a parish. It is difficult, however, to imagine that a right could exist prescriptively in any individual, which, if exercised by another,

would be deemed a public nuisance. Indeed the above authorities appear to have been over-ruled, or more properly speaking, denied. See *Dewell v. Sanders*, Cro. Jac. 490, in which the court also held, that so far as the erecting of a dove-house (or rather the storing of it with pigeons) might be a nuisance, it extended itself beyond the boundary of any leet jurisdiction existing in the particular place, and therefore was not inquirable in the court leet, but by the justices of assise; vide also 1 Roll. Rep. 201.

Eve-droppers.—Jenk. 22; Kitch. 20 (such as stand under walls, windows, at doors or other places to carry tales to others, thereby to cause debate or strife amongst their neighbours). Vide also Scroggs, 20; Shepp. 48; Pow. 91.

False Measures.—See *Measures*, post.

Felonies.—Kitch. 15 (of all felonies at the common law, but not of the death of a man, cites 22 Ed. 4, 22); Br. Leet, 26, cites S. C. And see ib. 2; 2 Inst. 181; Shepp. 10, 39; Pow. 53; 2 Hale, H. P. C. 71 (leets have power to receive indictments of felonies at common law, but not of felonies by act of parliament, unless specially limited to them). See post, *Treason*.

Fish.—Kitch. 27; Pow. 73 (the taking of fish feloniously out of ponds, stews or trunks in the night; but when taken in the river it is not felony); Jenk. P. C. 29 (if any person shall either by day or by night break down the head or dam of any pond, pool or moat wherein the lord hath fish, with an intent to steal or destroy the said fish, he shall pay to the lord treble damages, and be imprisoned three months and be bound to good behaviour for seven years). Vide also 1 Eliz. c. 17, for preserving the spawn and fry of fish, (post, Appendix); Shepp. 59, 60; Pow. 146.

Forestalling, Regrating and Engrossing.—[See the 12 Geo. 3, c. 71, repealing all the statutes concerning these offences.] Jenk. P. C. 18 (forestallers, regrators and ingrossers are here also to be presented or informed against); Shepp. 52, 53 (these are offences against the common law, and so to be inquired of still:—and the offender to be amerced). And see Kitch. 45; Pow. 104, 105; Greenw. 293; 4 Bl. Com. 157, 158.

Forfeiture.—Shepp. 43, 44 (“the escheats of all felonies did pertain to lords, and therefore are inquirable here: you are to inquire, therefore, of all kinds of forfeitures to the state;” ante, pp. 631 et seq., 638).

Franchises.—See post, *Treasure Trove*, *Waif*, *Wreck*.

Fugitives.—Stat. 18 Ed. 2 (“and if there be any of the king’s villains fugitive dwelling otherwise than in the king’s demesnes, and of such as be within the king’s demesnes and have not abiden a year and a day”); ib., (“and if there be any of the lord’s villains in franck-pledge otherwise than in this court,”) [but it should seem that this latter section was not in the original]. Vide also Kitch. 19; Jenk. P. C. 14, 15 (the jury is to inquire of these offences and present them).

Gaming Houses (and playing at unlawful games). See 33 Hen. 8, c. 9; Kitch. 32; Lex Man. 146; Scroggs, 20.

Hamsoken, (Homesoken,) or the invasion of a house.—[Britt. c. 29; Stat. Wall.]

Hares.—[Vide the stat. 14 and 15 Hen. 8, c. 10, (post, Appendix,) against tracing and destroying hares in the snow. And see Kitch. 39, 43; Jenk. P. C. 32; Pow. 149.]

Highways.—[See 2 and 3 P. and M. c. 8; 18 Eliz. c. 10; post, Appendix.] Lex Man. 146 (such who do not their day's work in mending the highways contrary to the statute 2 and 3 P. and M. c. 8). [The liability to repair and the want of reparation should appear in the presentment; *Rex v. Johnson*, 1 Keb. 527; et vide *Broughton v. Bennet*, 2 Keb. 514; in which the court of B. R. held, that lessee for years was not bound to repair *ratione tenuræ*. Neglect of scouring a ditch in a public highway is punishable in leet, although the act of 18 Eliz. c. 10, gives the forfeitures for highways to the surveyors; *Stephens v. Hayns*, Sir T. Raym. 250.]

Horsebread.—See post, *Innholders*.

Hostlers.—See post, *Innholders*.

Hue and Cry.—Stat. 18 Ed. 2 (of cries levied and not pursued); Scroggs, 10 (all who shall levy a hue and cry without cause, or neglect to levy one where they ought, or to pursue one rightly levied). And see Stat. Wall. Kitch. 33, '99; Jenk. P. C. 30; Pow. 158.

Innholders.—[See the stat. 21 Jac. 1, c. 21, (post, Appendix); Pow. 113.]

Larceny.—Stat. 18 Ed. 2 (of petty larcens, as of geese, hens or sheafs); ib. (of thieves that steal clothes, or of thieves that do pilfer clothes through windows and walls); ib. (of such as go in message for thieves); Jenk. P. C. 13 (petit larceny is also here to be inquired of); ib. 23 (also if any go in message for thieves, knowing them to be thieves). Vide also Kitch. 18, 20; Pow. 64.

Letherwite.—See *Adultery*.

Maiming, (Mutilation).—[Jenk. P. C. 10.]

Malt.—[See stat. 2 and 3 Ed. 6, c. 10, post, Appendix.]

Manslaughter.—Jenk. P. C. 9 (is here to be inquired of as bloodshed); Kitch. 16 (manslaughter is here inquirable). And see Pow. 55.

Measures: (False Measures and Weights).—Stat. 18 Ed. 2 (of false measures, as bushels, gallons, yards and ells); ib. (of false balances and weights); ib. (of such as have double measure, and buy by the great and sell by the less). And see Kitch. 21 (cites 8 Hen. 6, 5; Mag. Ch. c. 25; 51 Hen. 3, 5; 27 E. 3, 10); ib. 45 (cites Britt. f. 32, 71); Jenk. P. C. 23, 24; Shepp. 16, 52; Pow. 119; Scroggs, 10; Greenw. 295; 55 Geo. 3, c. 43; 5 Burn, J., 545; 5 Geo. 4, c. 74; 6 Geo. 4, c. 12; *Willcock v. Windsor*, 3 Barn. & Adol. 43. Ante, p. 722. [N. B. The punishment of knavish bakers was anciently to stand in the pillory, and of knavish brewers to stand

See
Nuisances

in the tumbrel or dung cart. Vide *Stat. Judicium Pillorie*; 51 Hen. 3, stat. 6; 3 Inst. 219; 4 Bl. Com. 157.]

Miller.—Kitch. 22 (if any miller within the lordship change the corn which he hath to grind it is inquirable). See also Jenk. P. C. 23. And see post, *Toll*.

Murder.—Kitch. 43 (you may inquire in leet of all felonies at common law, but not of the death of a man, cites 22 Ed. 4, 22). Yet see Kitch. 16; Stat. Wall. Britt. c. 29; Flet. 2, c. 52; Br. Leet, 18 (a steward in leet cannot take indictment of the death of a man, and if he do the lord shall be punished for contempt, cites 41 Ass. 30). And see Fitz. Tourne de Vis. 5; ib. Lete et Hundr. 10; Shepp. 17. But see Jenk. P. C. 9 (murder to be inquired of in leet as bloodshed). And see Pow. 53, 54.

Musters.—See the act 4 and 5 P. and M. c. 3, post, Appendix; Kitch. 36, 43; Pow. 153.

Noctivagancy.—Stat. 18 Ed. 2 (of such as sleep by day and watch by night, and eat and drink well and have nothing); ib. (of such as continually haunt taverns and no man knoweth whereon they do live). And see Jenk. P. C. 22; Kitch. 20 (also if there be any vagabonds or wanderers, and those which walk by night and sleep by day, and if there be any which are common haunters of taverns or ale-houses, and go about having nothing to live of); ib. 44, 45 (night walkers are inquirable in leet, cites 4 Hen. 7, 1); Shepp. 48 (he that sleepeth by day and walketh by night). Vide also Rastal, Leet, 2; Poph. 208; Pow. 93, 96.

Nuisances.—Stat. 18 Ed. 2 (of walls, houses, dykes and hedges set up or beaten down to annoyance); ib. (of bounds withdrawn and taken away); ib. (of ways and paths opened or stopped); ib. (of waters turned or stopped or brought from their right course). And see Stat. Wall. Kitch. 41, 44 (of ways and paths taken away or stopped; of waters wrong turned or stopped or taken away, of corrupters of water by lime, flax, &c.). And see Jenk. P. C. 21; Shepp. 45; Kitch. 44 (stopping the highway is there inquirable, 27 Hen. 8, 32, for that is a common annoyance to all the king's subjects); ib. (common nuisances, as ditches and hedges made to the disturbance of the people, cites 9 Hen. 6, 44; 10 Hen. 6, 7). And see Br. Leet, 2, 26; Flet. 2, c. 52; Britt. c. 29; Co. Lit. 56. Kitch. 44 (purprestures in highways are inquirable there, and presentment may be in leet for not cleansing a ditch adjoining the highway); cites 1 R. 3, 1; 3 Hen. 7, 1; 47 E. 3, 12. And see Jenk. P. C. 20; Shepp. 12, 13; Flet. 2, c. 52. Jenk. P. C. 21 (if any walls, houses, pales or hedges be made or erected within the jurisdiction of this court to the annoyance of the people); Br. Leete, 30 (presentment in leet of the inclosure of a common is void, for

VOL. II.

Pollard & Hailland Early English Law Vol. II. Pt. 519, 520
 "a general understanding seems to have allowed the sheriff in his turn, and the lords of franchises in their 'leets' to demand presentments about any matter that concerned the king's rights or his peace".... "Articles of the Turn" or "Articles of the view of

7. and knowledge were drawn ab. The different cases which have come down to us though they bear one general character differ in many details. . . . "These are nuisances especially the straightening of highways - these can be summarily removed or addressed"

speaking of grants of view of Pleanbridge they say "Towards the end of the 13th century the word 'leet' (leat) - which seems to have spread outwards from the East Anglian Counties - was becoming a common name for such a Court, but to the last, viz as franciplegic remained the usual formal and correct of titles"

it is a wrong but not a common nuisance, for that must be to the injury of a great number of people, as the destruction of a highway, or the neglect to repair a bridge, cites 27 Ass. 6). And see Shepp. 44; Pow. 81, 82; 1 Anders. Rep. 234, ca. 251, where the presentment was held void, being for diverting the highway, and not for stopping or obstructing it.

Officers: viz. aleconners, constables, tithing-men, &c.—Jenk. P. C. 20, 25 (their neglect is to be inquired of and presented in leet). And see Pow. 18, 157; Shepp. 49; ante, pp. 688, 714, et seq., particularly the act referred to at p. 715 of 5 and 6 Vict. c. 109.

Outlaws.—Stat. 18 Ed. 2; Stat. Wall. (of persons outlawed returned, not having the king's warrant); Britt. c. 29; Flet. l. 2, c. 52 (of outlaws and those who have abjured the realm returned, and of their goods and receivers). And see Mirr. c. 1, s. 17; Jenk. P. C. 27. Kitch. 23 (if any person be outlawed in debt, trespass or other personal action, his goods are forfeited, and the king shall have them, unless they be granted unto the lord by charter; this is also here inquirable). And see Shepp. 12; Pow. 160, &c.

Peacocks.—See *Swans*.

Pheasants and Partridges.—See the act 23 Eliz. c. 10, for their preservation, in the Appendix; Kitch. 31; Jenk. P. C. 33; Pow. 148.

Pigeons.—Kitch. 17 (taking of young pigeons or young goshawks [goss hawks] in their nests in the night is felony and inquirable in leet, cites 14 Hen. 8; 18 Ed. 4, 8). And see Jenk. P. C. 11; Pow. 64; Greenw. 287.

Pillory, Tumbrel, &c.—Jenk. 28 (the jury are to inquire whether there be within the leet a pillory, and tumbrel and stocks, to punish offenders according to law: in every town where there is a leet there ought to be stocks, and in default thereof the town shall forfeit 5*l*). And see Kitch. 24; Pow. 156; Shepp. 16. [Vide also ante, p. 688; and *quare* if it is not the duty of the lord to provide a pillory, tumbrel and the like instruments of punishment; and note the distinction there as to stocks. And see *False Measures and Weights*, ante.]

Pound-breach.—Kitch. 20 (if any break the common pound or take distress from thence present their names); ib. 41 (of breaking the common pound); Jenk. P. C. 21 (inquiry is also to be made of all pound breakers, such as break the common pound to take any distress out of the same, their names are to be presented). And see Stat. Wall.; Pow. 89; Scroggs, 21 (you are to inquire of all pound-breach and rescous: if any cattle be put in the lord's pound, and taken out by force otherwise than by due course of law, this is called pound breach, and by you inquirable, &c.). [But note, according to *Sanderson's* case, 4 Leo, 12, pound-breach is not inquir-

able in leet, not being a common nuisance. *Sed quare*, whether it is not in the nature of rescue, and inquirable and punishable in leet accordingly.] Shepp. 16 (lack of stocks, pillory and tumbrel, ducking stool, *common pound*, cites old book of entries, 390, 495; Pow. 156); Greenw. 292.

Purprestures.—Stat. 18 Ed. 2 (of purprestures made in lands and waters to annoyance). And see *Nuisances*.

Rape.—Stat. 18 Edw. 2 (of women ravished not presented before the coroners). Kitch. 41, in his breviat of charge, says (of ravishing a woman, which is not presented before the coroner). See also Kitch. 16, 17 (citing Stamf. 23 b, Rastal, Rape, 2); Pow. 48; Kitch. 17 (rape as felony, which is felony made by the statute, is not inquirable in leet, nor anything given by statute, unless it be inquirable by express words, but that which is made petit treason by statute is inquirable as felony by the common law, cites 11 Hen. 7, 22); 2 Inst. 181 (if rape had not been made felony by the stat. of Will. 2, but had been felony when that act was made, then should the court of the leet have inquired of it, as of a felony by the common law; but seeing it was made felony by that statute, it hath been often adjudged that the leet cannot inquire thereof: for albeit it was once felony, yet the nature of the offence being changed, as is above said to be no felony, when another act made it felony again, yet could not the leet inquire thereof, as of a felony). And see Br. Abr. Leet, pl. 22 (cites 6 Hen. 7, 4; Fitz. Lete et Hundr. pl. 10, citing 7 Hen. 6, 12). Vide also Kitch. 16, 43; Pow. 53, 59 (rape as felony is not inquirable, but as trespass). Vide also Greenw. 286. But see Jenk. P. C. 9 (rape is also here to be inquired of). [Rits. on Courts Leet, p. 18, 19, urges on the authorities of Britt. Kitch. &c., that rape is inquirable in leet as a felony at common law, and observes that those who would allow it to be inquired of as trespass, should recollect that where a trespass is by statute turned into felony, the trespass is merged; for which he cites Bul. N. P. 32.] [N. B. By statute W. 1 (3 Ed. 1) c. 13, rape was made punishable as a trespass by two years' imprisonment and fine; and was made felony by W. 2 (13 Ed. 1, st. 1) c. 34; and benefit of clergy was taken away by 18 Eliz. c. 7. Previously to the stat. W. 1, rape was punishable by mutilation, and in old time was felony; ante, p. 729, n. (o).]

Rescue.—Kitch. 17 (the rescue of any taken for felony is felony, and here inquirable), cites 1 Hen. 7, 9; Jenk P. C. 22; (if any rescue be made within the jurisdiction of the court, upon the sheriff or any of his bailiffs, or any other officers, it is to be inquired of and presented). And see Pow. 89; Shepp. 41; Scroggs, 21; Greenw. 288.

Scolds.—Jenk. P. C. 21 (if there be any common barretors within the jurisdiction of the leet, *common scolds*, or makers of debate, to the annoyance and disturbance of their neighbours, this is inquirable). And see Hob. 246; Pow. 90; Shepp. 48; Scroggs, 20. *Per Cur.* in *The Queen v. Foxby*, 6 Mod. 11, 178, 213 (“the frequent repetition of it to the disturbance of the neighbourhood makes it a nuisance, and as such it always has been punishable in leet, and *ideo* indictable”). Mo. 847; 2 Str. 1247. [A scold is said to be punishable by being put into the ducking-stool; *Queen v. Foxby*, sup.; 1 Hawk. P. C. c. 75, s. 14.]

Sorcerers.—Flet. 2, c. 52; Britt. c. 29 (of sorcerers, &c., and their receivers). And see Pow. 60, 61; Greenw. 287.

Stocks.—[Vide 4 Jac. 1, c. 5, s. 2, for repressing drunkenness. See also *Pillory*, ante; *Tiplers*, post.]

Suitors: Deciners.—Stat. 18 Ed. 2 (first you shall say unto us by the oath that you have made, if all the jurors that owe suit to this court be come, and which not); ib. (“of customs and services due to this court withdrawn, how, and by whom, and in what bailiff’s times”); Kitch. 19 (if the suitors and deciners, *scil.* if any of them which are resident appear in person, or not: and if any of them make default, to present their names); ib. 41 (suitors, viz. resiants, which owe suit royal [real], capital pledges and deciners, of those of twelve years and not sworn); Jenk. P. C. 20 (if all constables, headboroughs, deciners, tithing-men, and all others that owe any suit to this court, be present to do their suit and service, and to present the names of all that are absent or make default). And see Flet. 2, c. 52; Britt. c. 29; Mirr. c. 1, s. 17. Ante, *Chief Pledges*.

Swans.—Kitch. 18 (“also the taking of tame deer, with a felonious intent, is felony, the same law the taking of cygnets, *swans*, marked, and peacocks, and here inquirable,” cites Stamf. f. 25, C.; 18 Hen. 8, 2). Vide also as to swans, cygnets, or peacocks, marked, Shepp. 41; Pow. 73.

Tiplers.—[By 1 Jac. c. 9, and 4 Jac. c. 5, presentment is to be made in leet of persons who shall continue drinking or tipling, or shall suffer persons to continue drinking or tipling in alehouses, &c. See also 7 Jac. c. 10; 1 Car. 1, c. 4; Greenw. 293. And see *Ale-house-keeper*, ante. But note, the above acts, with others, were repealed by 9 Geo. 4, c. 61, s. 35.]

Tithing-men.—See *Officers*.

Toll (Excessive Toll).—Kitch. 22 (also if millers take excessive toll, is inquirable); Jenk. P. C. 25 (if any millers take excessive toll, they are to be inquired of). And see Shepp. 17. *Per* Rhodes, Serjt., 4 Leo. 12 (“excessive toll is inquirable in leet”).

Treason: High-Treason.—Kitch. 16 (high-treason inquirable in leet as felony); ib. 43 (it is said that treason, as forging of money, is inquirable, cites 9 Hen. 6, 44); Br. Leet, 2 (cites S. C.); Jenk. P. C. 8 (the jury is to inquire of all high-treasons). And see Pow. 46, 48, 49; Greenw. 286; Shepp. 10, 11 (“the things which are here only to be inquired of, and not to be punished, are all felonies, which were so by the common law, though now they be made treason, as of such as are enemies to the king; falsify or abuse the king’s coin or seal”); ib. 39 (you are to inquire of all offences which are or were felonies by the common law, except about the death of a man; and in this consideration you are to inquire of those offences, that being treason do include felony, or be only felony, and those offences that being felonies by the common law are now by some statutes made treason; so you were to have inquired of and presented all that did imagine or endeavour the taking away the life of the king, &c.; so you are to inquire of any that levy war against the kingdom, or adhere to the king’s enemies; counterfeit any of the great seals or money; kill the justices of the one or other bench, in doing their offices, and such like offences); Scroggs. 84 (courts leet inquire of all offences under high-treason committed against the state and dignity of the king).

Petit-Treason.—Br. Ley gager, 99 (of petit-treason, but not of high-treason, cites 10 Hen. 6, 7); Kitch. 16, 43 (petty treason is inquirable, but as felony at the common law,) cites 12 Ass. 30; 19 Hen. 6, 47; 6 Hen. 7, 4; ib. (petty treason, and ancient felonies, that is to say, felonies at the common law, but not the death of a man); Jenk. P. C. 9 (petty treasons are, if any man kill his master or mistress, or a woman her husband; this is to be inquired of here as felony). And see Pow. 46, 52; Kitch. 50. citing Stamf. 2.

Treasure-Trove.—Stat 18 Ed. 2 (of treasure found). And see Stat. Wall. Britt. c. 29; Flet. 2, c. 52; Mirr. c. 1, s. 17; Kitch. 22; Greenw. 299; sed vid. Br. Leet, 43; ante, p. 655.

Tumbrel.—See *Pillory*, ante.

Vagabonds, (Wanderers).—See *Noctivagancy*, ante.

Victuals, (unwholesome Victuals).—Scroggs, 21 (you are to inquire of all bakers, butchers, poulterers, and others, that they vend good and wholesome meat and drink, fit for man’s body; if any offend herein, you are to present and punish the offenders); ib. 10. See also Br. Leet, 1; 4 Inst. 263; Kitch. 21; Shepp. 45, 54; Pow. 114, 115; Greenw. 294, 295; *Vaughton v. Atwood* (or *Vaughan v. Wood*), 1 Mod. 202; 2 Mod. 56; 3 Barn. & Adolp. 48; ante, p. 725.

Villeins.—See *Fugitives*, ante.

Usurers.—Pow. 101 (usurers are offenders against the common law).

And see Stat. Wall. Britt. c. 29; Flet. 2, c. 52; Mirr. c. 1, s. 17; Shepp. 17.

Waif, (bona fugitivorum).—Br. Leet, 5 (the lord of the leet hath power to try waif by inquest, but the lord of the hundred not, for he cannot try by jury, having no power to compel them to be sworn, cites 44 Ed. 3, 19); Kitch. 45 (cites S. C). Vide also, ib. 23; Jenk. P. C. 27; Shepp. 12; ante, p. 649, et seq.

Weights, (false weights, scales and measures).—See *Measures*, ante.

Wreck.—Kitch. 24 (by the stat. of 15 Rich. 2, c. 3, wreck of the sea may be tried and determined by the law of the land; for that, and for the profit of the king and the lord, it is inquirable in the leet). Ante, p. 651, et seq.

END OF THE THIRD PART.

APPENDIX

TO

THE COPYHOLDER (a).

Rules to be observed in holding a Customary Court Baron.

CALLING THE COURT.

AT the accustomed period of the year for holding a general court, the steward is to issue his precept to the bailiff of the manor, in the form [A](b), upon which the bailiff should affix a written notice of the place, day and hour appointed for the court, to the door of the parish church, or cause the notice to be read in the church by the clerk. The safer course is to give fifteen days' notice, but the author apprehends that a much shorter period would be deemed sufficient(c).

In order to lay a secure foundation for any proceeding at law against a copyholder for a forfeiture, by reason of his neglect of suit to the manor court, it would be advisable to serve a summons upon him personally(d).

And when a mise was joined upon a plaint in the nature of a writ of right(e), it was expedient not to trust to a general notice, but to summon all the homage personally, in order to secure the attendance of at least twelve customary tenants, as it is generally considered that every issue in every court shall be tried by twelve persons, and not by less(f).

(a) Part 1 (vol. 1.)

(b) Post, "Forms of Precepts, &c."

(c) Ante, pt. 1, p. 5.

(d) Ante, pt. 1, pp. 363, 444.

(e) Plaints in nature of writs of right, with some exceptions, post, 751, n., were abolished from the 31st December, 1834, by 3 & 4 Will. 4, c. 27. See the act, post; and reference to it, ante, pt. 1, p. 473, n. (a); pt. 3, p. 629, n. (h).

(f) Kitch. 222, 223, cites Fortesc. fol. 54 and 57, and says, "The stat. Westm. 2, c. 13, is that the sheriff shall inquire

by twelve, and not by less, and the same law shall be in leet. And for that this statute doth not extend to court baron, presentment of articles there by less than twelve may be, for one may hold court baron though there be but two suitors, and then they may inquire by two of articles for the lord; but hard it is when every one is inheritable to the laws of the realm, and the trial of the law is by twelve, of issue joined between party and party, that by your not power, that is to say, that there should not be twelve te-

The Court Day.

Manor Rolls, } On the day appointed for the court, the steward is to
Minute Book. } be prepared with the rolls of the manor for such refer-
 ences as may be necessary to his guidance as the judge of the court, upon
 any applications for admittance, or for licenses, &c., and for the inspection
 of the tenants of the manor, on payment of the accustomed fees (g); and
 he is also to be prepared with a minute book for recording the proceedings
 of the day, the style of the court being already written in it.

Steward's appointment. Should it be the first court holden by the
 steward for the particular manor, it is usual and proper for him, previous
 to the opening of the court, to read his appointment to the stewardship to
 the tenants assembled.

Opening the Court. The bailiff is then to open the court by an audible
 proclamation thus:—"Oyez; All manner of persons that owe suit and ser-

nants of every jury, to take from me my
 tryal which the law gives to me; and if
 you will try issue by les than twelve, you
 may impannel three or four of the friends
 to the parties; and to have no number
 certain under twelve, but to have such a
 number as the steward pleaseth, and to
 be at his choice, how many shall be
 sworn of a jury, and how many shall be
 impannelled, is inconvenient where there
 are more within the manor to be impan-
 nelled; and so it seems if there be not
 twelve to try the issue, they fail of power
 to minister law and to do justice; and
 copyholder may sue by bill in chancery,
 where there are not twelve homagers
 within the manor, or in action of trespass
 at the common law, and the party ought
 to be admitted in the lord's court, to the
 intent to bring trespass at the common
 law, and there law is more truly admin-
 istered than in court barons; and also if
 any sue in court barons for copyhold, he
 shall make his protestation to sue in na-
 ture of his writ at common law, and the
 process and proceedings shall be accord-
 ing to the course of the common law, and
 they shall join issue according to the
 course of the common law, and there
 (*venire fucias*) is, that they shall cause to
 come twelve free and lawful men accord-
 ing to the course of the common law, and
 for that it seems that tryal of issues there
 between parties shall be by twelve and
 not by less."

Vide also Kitch. 223, where he adds,
 "Enquest shall be by custom of the
 realm between party and party, in a court
 of record, by twelve at the common law,"
 cites Dr. and Stud. f. 14. Again,
 in the same page he says, "verdict of
 eleven shall not be taken," cites 41 Ass.
 11; 41 Edw. 3, f. 31, and 29 Edw. 3, f.
 33. And again, in the same page,
 "Every inquisition taken in the sheriff's
 turn shall be by twelve, and the same
 law is said there in a leet by the equity of
 the statute of 6 Hen. 4, fol. 3. Notwith-
 standing, seek if less than twelve may try
 issue between parties in the court of a
 lord of copyhold, or not, where there are
 not twelve within the manor; for it is
 held by some, that it shall be tried by
 less, and I have seen a trial between
 three or four. But I intend it is hard,
 and especially where there are twelve and
 more copyholders within the manor, and
 also it appears in the register, that an ac-
 tion was removed out of the court baron,
 because there were but four suitors, and
 so I conclude, issue for copyholders shall
 not be tried by less than twelve, 6 Hen. 4,
 f. 1." Ibid. p. 224; vide also Co. Litt.
 155 b, n. 3.

(g) These references will be greatly
 facilitated by keeping a very correct in-
 dex book of all copyhold assurances, vol-
 untary grants, licenses, &c., under an al-
 phabetical entry of the names of the
 copyholders of the manor.

vice to the customary court baron of ———, here this day to be holden for the manor of ———, or that have been summoned to appear at this court, draw near and give your attendance, every tenant answering to his name as he shall be called."

Suit roll. The suit roll should then be called over, marking against such of the tenants as appear [*ap.*], and against such as are duly essoined [*ess.*] (*h*).

Swearing the homage. This being done the homage are to be sworn (*i*), and their names written in the minute book, marking against them as they are sworn, "SW.," and when sworn, the steward is to give them their charge.

Breviat of charge. Unless any new tenant should be on the homage, this charge is usually confined to a brief detail of the business to be transacted, as far as the proposed acts of transmission of copyhold lands within the manor have come to the steward's knowledge, and to the reminding the homage of their duty to present the death of any tenants since the last court, in order that the lord may claim his advantages of heriot, &c.; and that the estates of such deceased copyholders may be put upon proclamation; and to present for enrolment any surrenders taken out of court by the tenants, or the bailiff or reeve (when that is allowed by the usage of the manor): and likewise any acts by which the copyhold tenements may have been forfeited to the lord, as by executing a feoffment with livery, leasing for a term of years without license, committing waste, or the like.

Full charge. But when there are any new tenants, it may be proper to give the charge more at length, calling the attention of the homage to the following detail of their duty, (and with such additional observations in conclusion, as the particular business of the day may seem to require on the part of the steward, as the judge of the court;) viz.

First. Reminding the homage that it is their province to present the death of any of the tenants since the last general court, and whether they left any heir inheritable by the custom, and any surrenders taken out of

(*h*) Ante, pt. 1, p. 363. It behoves every lord of a manor to call over the names of the copyholders at each general court, in order that the tenants may be the better enabled to watch over his interests, and to defeat any attempt to convert the copyhold into freehold tenure. We have seen that copyholds were within the statute of non-claim, 4 Hen. 7, when the fine was levied by a *disseisor*, ante, pt. 1, p. 81, 82; and it was decided in Margaret Podger's case, 9 Co. 105, that the lord was not allowed five years after the death of the copyholder, even if he had been a copyholder for life, but must have made his claim within five years after the fine was levied. It must

not, however, be supposed, that it was in the power of the copyholder *covinously* to effect a bar to the lord by a feoffment and fine; the contrary was decided in Fermor's case, 3 Co. 77, Toth. 165, where the copyholder continued in possession, and paid his rent; and was recognized in the above case of Margaret Podger. See also Co. Litt. 330 b, N. 1; ante, pt. 1, pp. 434, 435. But see the act of 3 & 4 Will. 4, c. 74, abolishing fines and recoveries, referred to ante, pt. 1, p. 57, and extracted, post. And see as to the operation of a feoffment, 8 & 9 Vict. c. 106, s. 4.

(*i*) See the oath, post, "Forms of Precepts, &c." [B.]

court by themselves or other tenants of the manor, or the bailiff or reeve, when such a custom prevails (*k*).

Secondly. Impressing upon them the particular necessity of their informing themselves of any alienation of copyhold property within the manor by a common law assurance, and especially by deed of feoffment either with or without a fine, and whether by way of sale or mortgage, or otherwise, which alienation by feoffment would be a forfeiture to the lord of the estate so conveyed, and ought therefore more particularly to be presented in court for his instruction (*l*).

Thirdly. The necessity also of their inquiring of any leases of copyhold property (or of any mortgage by demise operating as a lease) beyond the term of a year, or any greater term permitted by the custom of the manor, without the license of the lord for so doing; and which would also be a forfeiture, and presentable at the court (*m*).

Fourthly. Whether any of the copyhold tenants have been convicted of treason, or felony (*n*), or been outlawed for any capital crime (*o*), or have committed *voluntary* waste by pulling down houses, barns, or other out-buildings (*p*), cutting down trees, digging for mines or the like: or *permissive* waste, by neglecting to repair buildings, or injury to lands in not attending to the ordinary rules of cultivation (*q*), or have inclosed where no inclosure has been before, or removed or abated an ancient inclosure or land mark (*r*).

Fifthly. Whether any purchase has been within the manor by an alien, or other persons incapacitated from purchasing or holding copyhold tenements (*s*).

Sixthly. Whether any encroachments have been made on the waste of the lord, in order to their immediate removal, as a possession for twenty years would be deemed adverse as to the lord (*t*).

And lastly, charging the homage of their duty to inquire of all other things concerning the lord's interest, or which in their consciences ought to be inquired of as between the lord and tenant, or as between tenant and tenant, and to make due presentment thereof accordingly (*u*).

Presentments. The homage are generally prepared with their presentments, but if not, they are to retire and consider of them.

The next step is, for the steward to enter in his minute book the several presentments of deaths, surrenders out of court, acts of forfeiture, &c., and

(*k*) Ante, pt. 1, p. 125.

(*l*) Ante, pt. 1, p. 434.

(*m*) Ante, pt. 1, p. 436, &c.

(*n*) Ante, pt. 1, p. 439.

(*o*) Ante, pt. 1, p. 442.

(*p*) In *Doe d. Grubb v. The Earl of Burlington*, 5 Barn. & Adol. 507, the jury having found that no damage ensued from the pulling down of a barn, the Court of B. R. held that the act was not waste. Ante, pt. 1, p. 442, 443.

(*q*) Ante, pt. 1, p. 442, 443.

(*r*) Ante, pt. 1, p. 445.

(*s*) Ante, pt. 1, p. 109, 455 et seq.

(*t*) Ante, pt. 1, pp. 431, 442, 469; Fisher, 180.

(*u*) N. B. The steward is not bound to receive any presentments whereby the rights of the lord may be prejudiced; 1 Ca. & Op. 172.

also a minute of any surrenders, warrants to enter satisfaction on conditional surrenders by way of mortgage, licenses to demise, &c., taken or granted since the last court by the lord, or by the steward, or any person acting under his deputation.

The several surrenders and warrants out of court should then be indorsed thus:—"Presented and inrolled at a court held for the manor of ——— this ——— day of ———," to which the foreman and another homager are to subscribe their names.

Proclamations. When any tenant's death is presented, the bailiff should notify it at the door of the court by proclamation, thus:

"If any one can make any title or claim to the copyhold tenements holden of this manor, whereof *A. B.* lately died seised, let him appear, and he shall be admitted, and in default, the same will be taken into the hands of the lord, for want of a tenant: this is the [1st] proclamation."

And if no claim should be established at the same court, a like proclamation is to be made at the succeeding general court, and to be repeated at the third general court, should no claim be established at the second.

So when there is a custom to compel a surrenderee to be admitted, if any surrender made out of court is presented, or if any surrender be made in court, the bailiff is to notify such surrender, thus:

"*A. B.* [*the surrenderee*] come into court, and be admitted to the copyhold tenements holden of this manor, and surrendered to your use by "*C. D.*, or the same will be seized into the lord's hands."

Surrenders in court. If any tenant should desire to make a surrender in court of all or part of his copyhold lands, the steward, by reference to the court rolls, is to satisfy himself that the person is seised for the estate he proposes to transmit to another, and, since the act 48 Geo. III. c. 149, is to make the copyholder sign a declaration of the proposed surrender being made on a sale, or mortgage or otherwise, and, if on a sale or mortgage, of the amount of the consideration money to be paid, in order that the sum may appear on the face of the court rolls, and of the copy thereof to be delivered to the purchaser or mortgagee, and by which the amount of the stamp duty is to be regulated.

And then (the copyholder holding one end of the rod, or other symbol, and the steward holding the other end,) the steward is to say, "You surrender into the hands of the lord of this manor, by my hands and acceptance by the rod, All, &c., with their appurtenances, *and all your estate and interest therein*, to the use of *C. D. and his heirs for ever*, according to the custom of this manor."

Should the surrender be for life only, or other particular estate, the words in italics are to be omitted, and others substituted to meet the particular case.

If the surrender be conditional by way of mortgage, the steward will add, "But on the express condition, that this surrender is to be void, on payment to the said *C. D.* of £—— and lawful interest for the same, on the ——— day of ——— *next* [or as the case may be]". And the copyholder is to answer affirmatively, relinquishing the rod or other symbol into the steward's hand.

Examination of feme covert. When the surrender is of the copyhold of the wife, or when the alienation of the husband does not defeat the wife's customary dower (*x*), she is to join in the surrender, and is previously to be questioned by the steward, apart from her husband, as to her voluntary consent to the proposed act, the same as on levying a fine of freehold lands prior to the act of 3 & 4 Will. IV. c. 74 (*y*).

Arrears of rent. It would seem that a copyholder is not chargeable with any arrears of rent due before his admission, so that previous to the admittance of any new tenant the steward should ascertain that no rent remains due (*z*).

Admittances. If any persons attend to be admitted, the steward is to investigate their claims, with reference to the title as it already appears upon the court rolls, or may be deduced by will, or intestacy, or otherwise, and to make a short minute of the circumstances, to enable him afterwards to draw out the admission in due form; and when the will or other document is very long, and it cannot be left with him, he will require to have a copy or full extract from it.

Being satisfied of the claimant's right to admittance, the steward (he having hold of one end of the rod or other symbol, and the claimant holding the other) is to say: "The lord of this manor, by me his steward, doth admit you tenant to the copyhold tenements holden of this manor, of which *A. B.* lately died seised, [or which have been surrendered to your use, at this court, by *A. B.*,] [or which were surrendered by *A. B.*, to your use, on the — day of —]. And this is to hold to you and your heirs, [or as the case may be] at the will of the lord, by the accustomed fine, "heriot, rents, and services; in token whereof I deliver to you this rod,"

(*x*) Ante, pt. 1, p. 72, et seq., p. 134.

(*y*) Ante, pt. 1, p. 130, et seq.; post, p. (751).

The 77th section of the above mentioned act, authorizing married women to convey by deed, expressly excepts the case of a copyhold, where the wife, or she and her husband in her right, may be seised for an estate at law, and which prior to the act could have been passed by a surrender.

By the 90th section, a surrender either in or out of court by a husband and wife of copyhold lands, in which she alone, or she and her husband in her right may have an equitable estate, the wife being separately examined as if the estate were an estate at law, will bind the wife and all persons claiming under her; and all surrenders made prior to the act, of lands similarly circumstanced, the wife having been separately examined by the person

taking the surrender, are thereby declared to be valid.

Although a surrender is the preferable mode of conveyance, yet the author apprehends that an equitable estate in fee, or for life, of a married woman, in copyholds, may be conveyed by deed under the 77th section, such deed being acknowledged by her in the manner directed in the 79th section.

See as to the mode of barring an equitable estate tail of a feme covert in copyholds, post (751), n. (i).

And note,—that the release or extinguishment by a feme covert of a mere right, or a power, in regard to copyhold lands, is to be effected by a deed, (s. 77,) the deed being acknowledged as directed by the 79th section, and the husband concurring in it.

(*z*) Ante, pt. 1, p. 366.

[or other symbol, and which the steward relinquishes into the hand of the new tenant].

The preceding observations, although applicable only to copyholds of inheritance, will render it unnecessary to lay down any particular rules for the steward's guidance, when the copyholds are held for lives. The only material variation in those cases is, that the copyholder for lives, when desirous of adding or exchanging a life, surrenders *absolutely* to the lord for the existing life or lives, to the intent that he will re-grant for the old and new lives, and the steward signifies that the lord by his hands grants seisin accordingly.

And when the reversionary cestui que vies have a legal interest, and there is no special custom authorizing the first life to destroy the whole estate (*a*), they must join in the surrender.

Fine. When the fine is certain, or the lord and tenant have agreed on the amount, it is then to be paid with the steward's fees, and also the court fees, (being usually a small payment to the bailiff on every surrender and admittance;) but if the fine be uncertain, and no agreement has been made, the steward is to assess it, and appoint a day and place for the payment (*b*).

Fealty. It was at this stage of the court business that the oath of fealty, now usually, if not invariably, commuted by a small payment, and entered as respited, was administered (*c*).

Surrender to will. When admittance has taken place, the copyholder may, notwithstanding the provisions of the act 1 Vict. c. 26, s. 3, surrender his estate to the uses of his will (*d*), which surrender is to be made in the manner already explained, the uses of the surrender being thus stated by the steward, viz. "to the use of such person or persons, for such "estate or estates, intents and purposes, as he (the copyholder) by his last "will and testament in writing already made, or afterwards to be made, "hath given, devised, directed, or appointed, or shall give, devise, direct "or appoint the same."

Precept to seize. If three proclamations have been made as to any copyhold tenement, or if the party intitled to admission has been served personally with notice to appear at the court, and the heir or other person so intitled should not attend and claim to be admitted, the steward is to issue a precept to seize the same (*e*) in the form [C] (post, "Forms of Precepts, &c.").

Surrender to bar an estate-tail under 3 & 4 Will. IV. c. 74. By the operation of this statute a different course was prescribed to the steward, when a copyholder, subsequently to the 31st of December, 1833, attended in court for the purpose of barring an estate-tail, and of acquiring an absolute or base customary fee.

If the party should not have been already admitted, either separately, or by the previous admission of the particular tenant, under the rule of law that an admission of a tenant for years or for life is the admission of all in

(a) Ante, pt. 1, pp. 27, 124.

(b) Ante, pt. 1, p. 353, &c.

(c) Ante, pt. 1, p. 362.

(d) Ante, pt. 1, p. 211; and p. 247,

and n. (*a*).

(e) Ante, pt. 1, p. 285; but it would seem that a written precept to seize is not absolutely necessary; ante, pt. 1, p. 288.

remainder, he is, of course, first to be admitted tenant of the estate in tail, and then, under the 15th, 46th, and 53rd sections of the above mentioned act (f), he must surrender to the use of himself in fee, or to any such particular uses as he may desire (g).

Should the party be tenant in tail in remainder, he is to be informed by the steward that a surrender by him alone would only create a base fee, though under the 19th section of the above act he might afterwards, with the concurrence of the particular tenant, intitled for a term of years determinable on a life or lives, or any greater estate, as protector of the settlement under the 34th section of the act (h), or alone after the determination

(f) The 16th section enacts that the power of disposition shall not be exercised by women tenants in tail *ex provisione viri*, under 11 Hen. 7, c. 20, except with the assent required by that act. And the 18th section has provided that the power shall not extend to cases where the reversion is in the crown, or to tenants in tail after possibility of issue extinct. And the 20th section prohibits the issue of tenants in tail from barring their expectancies.

(g) By the 50th section, a disposition by a tenant in tail, whose estate shall be an estate *at law*, must be by surrender, but a disposition by a tenant in tail, whose estate shall be merely an estate *in equity*, may be either by a surrender, or by deed, as provided for by the 53rd section, and by which equitable tenants in tail of copyhold lands are authorised to dispose of such lands by deed, and the deed is not required to be inrolled otherwise than by entry on the court rolls (see sect. 54). The 53rd section also requires that if there shall be a protector, he shall consent to such disposition by a distinct deed, to be entered on the court rolls, and the lord or steward to indorse or sign a memorandum thereon, testifying the entry thereof on the rolls. And it also provides that every disposition by deed by an equitable tenant in tail of copyholds, shall be void against any person claiming the lands for valuable consideration under any subsequent assurance, duly entered on the court roll, unless such deed of disposition be entered thereon before the entry of such subsequent assurance.

On an application to inrol a deed of disposition under the 53rd section, it is suf-

ficient if the affidavit discloses the contents, and not necessary to annex a copy of the deed. *Ante*, pt. 1, p. 61, n. (o).

(h) The consent of the protector to a disposition of copyhold lands may be given to the person taking the surrender, or by deed. If the consent be given in court, the entry of the surrender on the rolls is to contain a statement that the consent had been given, and if the surrender be made out of court, the memorandum of surrender must contain a statement that the consent had been given, and be signed by the protector; (a. 52). And if the consent be given by deed, such deed, executed by the protector, must be produced to the lord or steward at the time when the surrender shall be made, and the lord or steward is to indorse on the deed an acknowledgment that the same was produced within the time limited, and to cause such deed and indorsement to be entered on the court rolls, and after entry thereof, is to indorse and sign a memorandum thereon, testifying such entry on the court rolls; (a. 51).

When a married woman is the protector, she and her husband are as one owner, unless the prior estate was settled to her separate use, and then she alone is the protector of the settlement; (a. 24).

The 45th section enacts that a married woman being, either alone or jointly with her husband, protector of a settlement, may in the same manner as if she were a feme sole give her consent to the disposition of a tenant in tail.

Under the 27th, 28th, and 31st sections, no woman in respect of her dower, nor a bare trustee, heir, executor, admi-

of the particular estate, acquire an absolute customary fee by an ordinary surrender.

If the tenant in tail be a feme covert, she may acquire an absolute customary fee when intitled in possession, or a base fee when intitled in remainder, or, in the latter case, an absolute reversionary fee, the protector of the settlement concurring, by a surrender from herself and her husband, the wife being examined by the steward as to her voluntary consent; such surrender is to be made to the use of the wife and her heirs, or to any other uses that may be desired (i).

Adverse Customary Plaints (k). At this stage of the proceedings, the bailiff should make further proclamation thus: "*Oyez; If any person will enter any plaint, let him come into court and he shall be heard.*"

The steward will then enter any plaints in the order they are tendered (l).

Amercements. If any copyholder should have been amerced for non-attendance or otherwise (m), an entry should now be made thereof by the steward; and such amercement is to be affected by two of the oldest

nistrator or assign, is to be deemed the protector of the settlement, except that under a settlement made prior to the act, the person, who, being a bare trustee, would, if the act had not passed, have been the proper person to make the tenant to the precipe, is to be deemed the protector. And see s. 28, as to the person to be the protector when there shall be more than one estate prior to an estate tail, and the owner of any such prior estate shall be excluded from being the protector by being a bare trustee, heir, &c.

(i) A surrender would seem also to be the proper mode of conveyance under the above mentioned act by a feme covert *equitably* intitled to an estate tail, though the author apprehends that she might bar the intail by deed, to be entered on the court rolls (see ss. 53 and 54); but the deed would require to be acknowledged under the 79th section.

N.B. By the 76th section of the above statute, the Court of Common Pleas is to regulate the fees to be paid for entries of deeds on the court rolls of manors, and for the indorsements thereon, and for taking the consent of the protector, when not given by deed, and for taking surrenders by tenants in tail of copyhold lands, and entering such surrenders, or the memorandums thereof, on the court rolls. See the rules, post; vide observations on the

above statute, ante, pt. 1, pp. 57, 61.

(k) N.B. By 3 & 4 Will. 4, c. 27, plaints in nature of possessory actions and writs of right were abolished from 31st December, 1834, with the exception of a plaint for freebench; and except that by the 37th section a real action was permitted to be brought at any time before the 1st June, 1835, where, on the 31st December, 1834, the party had not a right of entry, but was entitled to maintain such action, and although the twenty years had expired: and that by the 38th section, where a right of entry had been taken away by a descent cast, discontinuance, or warranty, such action was maintainable at any period during which by virtue of the provisions of the act an entry might have been made, if the right had not been so taken away; see ss. 2, 16, 17, and 18.

(l) See the form of plaint in customary dower, and prayer of process, at the end of precedents of court rolls.

Much useful information will be found as to the proceedings in a plaint in nature of a writ of dower, and of a writ of right of dower, by analogy to the common law writs, in the 1st vol. of Roper's Law of Husband and Wife, p. 425 et seq.; and see Booth, 118, 166 et seq.; 3 Chitty on Plead. 593 et seq.; ante, pt. 1, p. 477.

(m) Ante, pt. 1, p. 363.

and most respectable tenants of the manor, who are to be sworn as affeerors in the form [L.] (n).

Licenses. As licenses, whether to demise or to take down buildings, or otherwise, operate as a dispensation of the forfeiture which would otherwise accrue to the lord, and form no part of the ministerial acts of the steward, he is to exercise his discretion in complying with any applications which may be made by the tenants for this act of dispensation, unless indeed custom has established the right to a license for alienation by a common law assurance, on payment of a settled fine; and he is to make a minute of the terms of the grant, and to notify it to the homage (o).

At the conclusion of the business of the day, the steward should read over the heads of the several entries in his minute-book to the homage; and at the foot of the minutes should be written,

"We present this as our verdict:"

to which the foreman is to subscribe his name, and so each homager after him, according to their priority of admission to copyholds within the manor (p). And then the bailiff is to declare the court at an end by proclamation, thus:—

"Oyez; All manner of persons that have appeared at this customary Court Baron of A. Z. have leave to depart hence, keeping their day and hour on a new summons (q)."

Special Court.

It is sometimes found to be convenient to hold a *special* customary Court Baron, to effect a proposed transmission of copyhold property (r); and in that case it is usual to summon two or three homagers only, and after the court has been opened by the bailiff, to administer the following oath to them, viz.

"You, and each of you, shall inquire, and true presentment make, of all such things as shall be given to you in charge, and of all such other matters as shall come to your knowledge, presentable at this court (s); this you shall do without fear, favour, or affection, hatred or malice, So help you God."

The steward will then explain to the homage the nature of the business for which the court is called, who will make their presentments accordingly; and the entries by the steward of the acts of assurance will correspond with the like minutes at a general court, which minutes are also in like manner to be presented as the *verdict* of the homage, and then the bailiff discharges

(n) Post, "Forms of Precepts," &c.

(o) Ante, pt. 1, pp. 456, 458.

(p) When any tenant enters the court after the homage are sworn, it is proper to let him sign his name as having been present during part of the proceedings, but not sworn.

(q) If it be found necessary to adjourn

the court, it should be done by a proclamation of this nature, stating the time to which it is so adjourned, when the bailiff should proclaim the re-assembling of the court.

(r) Ante, pt. 1, p. 5.

(s) Ib.

the attendance of the persons assembled, by a similar proclamation as on the occasion of a general court.

Further instructions in particular Cases.

Bankruptcy. When a bankrupt is intitled to copyhold lands, except as regards any copyholds belonging to him as tenant in tail, the steward is to require the production (for the purpose of presentment) of the bargain and sale of one of the commissioners, (or, in a country fiat, of all the commissioners, ante, pt. 1, pp. 303, 304), authorising some person (usually the bankrupt(*t*)) to surrender the copyhold lands, and is to accept a surrender accordingly, and to admit the surrenderee(*u*).

But the following provisions in the act of 3 & 4 Will. IV. c. 74, with regard to copyholds belonging to a bankrupt as tenant in tail, are to be observed by stewards of manors, when the fiat issued subsequently to the 31st December, 1833(*x*).

The 55th section repeals the bankrupt act of 6 Geo. 4, c. 16, as far as relates to the power given to the commissioners to make sale of lands vested in the bankrupt for an estate tail, but not to extend to the lands of a bankrupt under any commission or fiat issued on or before the 31st of December, 1833, nor to revive former acts. The 56th section authorises any commissioner acting in the execution of a fiat issued after the 31st of December, 1833, in the case of an actual tenant in tail of lands of *any tenure, by deed* to dispose of such lands to a purchaser, and to create by such disposition as large an estate in the lands as the actual tenant in tail could have done if he had not become bankrupt, the consent of the protector, if any, being made requisite to a disposition of such intailed lands for an absolute estate in fee. The 56th and 57th sections give to the disposition of the commissioner the same force as the disposition of the tenant in tail or owner of a base fee would have had if no bankruptcy had taken place. The 58th section places the commissioner, with reference to any dealings with the property, in the situation of the tenant in tail, in cases where there is a protector of the settlement.

The 59th section requires that the deed of disposition of a bankrupt's copyhold property under the provisions of the act shall be entered on the court rolls, and that if there shall be a protector, and his consent be given by a distinct deed, the consent shall be void, unless the deed of consent be executed either on or before the day on which the deed of disposition shall be executed by the commissioner, and that such deed of consent shall be

(*t*) See the reason for this in the precedent of bargain and sale of the copyhold of a bankrupt, post, "Copyhold Assurances."

(*u*) Ante, pt. 1, pp. 302, 303, 304.

If the surrender should have been previously made out of court, it is to be produced at the court, and presented by the

homage, or be entered on the court rolls under the 89th section of 4 & 5 Vict. c. 35.

(*x*) See ante, pt. 1, pp. 64, 65, 83, 302, n. (*x*), as to copyhold lands vested in the bankrupt for an estate tail, when the fiat issued prior to 31st December, 1833.

entered on the court rolls by the lord or steward, who is to indorse on the deed a memorandum signed by him, testifying the entry of the same on the court rolls.

And the 66th section provides that every disposition to be made under the act by any commissioner, of lands held by copy of court roll, where the bankrupt's interest shall not be merely an estate in equity, shall have the same operation as a surrender, and that the person to whom such disposition shall have been made may claim to be admitted in the same manner as if the lands had been surrendered to his use, on paying the fines and fees which could have been demanded if the lands had passed by surrender. This clause is restricted to a disposition under the act, and it is clear, the author submits, that the provisions of the act of 6 Geo. 4 (y), as to a bankrupt's copyhold property, other than in respect of intailed lands, are unrepealed by the above statute of 3 & 4 Will. 4.

Insolvency (z). When the general assignee, with a view to the sale of a copyhold estate of the insolvent under the act of 7 Geo. 4, c. 57, desired to have the conveyance to him from the provisional assignee entered on the court-rolls, as provided by the 20th section, the steward was to have made a full entry on the minutes of the purport of such conveyance, and afterwards to have had the deed copied at the end of the court-roll of the particular day. But the author has shown, that the copyhold property of an insolvent debtor became *vested* in the general assignee, not only without any admission, but even before an entry of the assignment on the court-rolls (a).

But stewards of manors are to bear in mind, that an important change was made with regard to the conveyance of the copyhold estates of insolvent debtors by the provisions of 1 & 2 Vict. c. 110, "For abolishing Arrest on Mesne Process," (ante, pt. 1, p. 308). By the 47th section of that act, a certified copy of the order *vesting* the insolvent's estate in the provisional assignee, and of the appointment of the general assignee, are to be entered on the court rolls, and the general assignee is authorised and directed to surrender the copyhold estate of the insolvent to a purchaser, whereby no admission is necessary either of the provisional or general assignee; so that the lord is precluded from claiming any fine in respect of such copyhold estate, except from the purchaser thereof on his admission; ante, pt. 1, pp. 350, 351.

Inclosure allotments (b). When under inclosure acts the proprietors are required to be admitted to the new allotments within a limited period, the act and award are to be briefly presented or recited, and then admission will follow on the prayer of each copyholder; the recital of such act and

(y) See ante, pt. 1, pp. 302, 303. And pt. 1, p. 304.

note, that any powers of appointment exercisable by a person becoming bankrupt,

may be exercised by the assignees chosen by the creditors, so as to entitle the appointee to claim to be admitted. Ante, (z) Ante, pt. 1, p. 306, et seq.

(a) Doe & Glenfield, 1 Bing. N. C. 729; 1 Sc. 699.

(b) Ante, pt. 1, pp. 21, 22. And see Cane v. Baldwin, 1 Stark. 65.

award need not be repeated in each admission, as it will be sufficient to refer to the inrolment of them under the first admittance, but the presentment of the act and award should form a part of each *copy* of admission.

Exchanges (c). Upon an exchange of copyholds the parties should surrender to each other, by distinct acts, to the use of the surrenderee and his heirs *in exchange*, &c., and then admission will follow in the ordinary form.

Purchases by the lord (d). If the lord purchase copyholds in the name of a trustee, the surrender and admittance will of course be the same as if the trustee had purchased on his own account. And when the lord purchases in his own name, the tenant is to surrender the estate in the common form, and also release all his right, &c., *to the use of the lord and his heirs, to the intent that he may do therewith his will and pleasure.*

PRECEDENTS OF COURT ROLLS.

FIRST COURT.

[*Copyholds of Inheritance.*]

The manor of — } A General Court Baron of *A. Z. (e)*, lord of the
in the county of — } said manor, holden in and for the said manor,
on — the — day of — in the — year of the
reign of our sovereign Lady Queen Victoria, by the
grace of God of the United Kingdom of Great Britain
and Ireland Queen, Defender of the Faith, and in the
year of our Lord —. Before *J. S.*, steward of the
said manor.

Homage { John Doe,
Richard Roe, } Sworn { Thomas Styles,
 &c. } William Goodtitle,
 &c.

(*Presentment of the death of A. B., 1st proclamation, and admittance of C. B. his customary heir*) (*f*).

(1. *a*). At this court the homage present the death of *A. B.*, late one of the customary tenants of this manor; and thereupon proclamation is made

(*c*) Ante, pt. 1, p. 123.

(*d*) Ante, pt. 1, pp. 35, 123, 544.

(*e*) When a feme covert is lady of the manor, the style of the court should be, "A general court baron of *A. Z.* and *C.* his wife, in right of the said *C. Z.*;" and the words of grant, "the said lord and lady, acting in right of the said lady, do grant, &c."

And when an infant under fourteen

years (ante, pt. 1, pp. 91, 398) is lord of the manor, the courts should be held in the name of the socage guardian until the infant is out of ward, and the grants, admittances, &c., be made in the name of the guardian; *Shopland v. Rider*, Cro. Jac. 99; *Ow.* 115. Note. Wardship in socage can be of heirs only, *i.e.* where the infant is in by descent; 2 Mod. 176; Co. Lit. 87 b, 88 b; though some have argued

for any person or persons claiming title to the customary or copyhold hereditaments lying within and holden of this manor, whereof the said *A. B.* died seized, to come into court and be admitted.

(1. *b*). Now at this court comes *C. B.*, the eldest son and heir according to the custom of this manor of the said *A. B.* deceased, and prays to be admitted to all and singular the customary or copyhold hereditaments lying within and holden of this manor, whereof the said *A. B.* so lately died seized as aforesaid, to wit, to [All, &c.] with their appurtenances, and to which said premises the said *A. B.* was admitted at a general court holden for this manor, on the — day of —. To which said *C. B.* the lord of this manor, by the said steward, grants seizin thereof by the rod, to have and to hold the said — — hereditaments and premises, with their appurtenances, unto the said *C. B.* and his heirs, to be holden of the lord by copy of court-roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, [heriot when it shall happen,] and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *C. B.* is admitted tenant thereof, and pays to the lord on such his admittance a fine [*certain*] of £— —, and his fealty is respited.

(Presentment of the death of C. D., first proclamation, presentment of his will, and admittance of E. F., his devisee.)

(2. *a*). At this court the homage present the death of *C. D.*, late one of the customary tenants of this manor, and thereupon proclamation is made for any person or persons claiming title to the customary or copyhold hereditaments lying within and holden of this manor, whereof the said *C. D.* died seized (*g*), to come into court and be admitted.

(2. *b*). And the homage also present that the said *C. D.*, in and by his last will and testament in writing, bearing date the — day of —, the probate whereof is now produced in court, gave and devised [All, &c.] and all other his real estates whatsoever, unto *E. F.*, his heirs and assigns for ever.

to the contrary; Co. Lit. 87 b, n. (1), 88 b, n. (13). But the guardianship in socage is superseded if the father exercise his testamentary power of appointing a guardian under the stat. 12 Car. 2, c. 24; Co. Lit. 88 b, n. (13); by which statute the father may appoint the guardianship to continue till twenty-one, or for any less time; ante, pt. 1, pp. 91, 398.

(*f*) Each copy to be made as evidence of title is to contain the several corresponding figures, commencing with the title of the court, (showing before whom it is held,) but omitting the names of the homage; as for instance, the copy for *C. B.* is to contain the title of the court, and (1. *a*) and

(1. *b*); and the copy for *E. F.* is to contain the title of the court, and (2. *a*), (2. *b*), (2. *c*) and (2. *d*).

It is usual to mark the amount of the fine in the margin both of the court-roll and copy; and the title of each entry (which the author proposes to give in a parenthesis) should be written in the margin of the court-rolls. Each copy should be examined with the rolls, and signed by the steward.

(*g*) If *C. D.* had surrendered to the uses of his will, add here, "and which were surrendered by him to the uses of his will."

(2. c). Now at this court comes the said *E. F.* and prays to be admitted to all and singular the customary or copyhold hereditaments lying within and holden of this manor, so devised to him by the said will of the said *C. D.* as aforesaid, to wit, [All, &c.] with their appurtenances, and to which same premises the said *C. D.* was admitted at a special court holden for this manor on the — day of —. *To which* said *E. F.*, the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said — — hereditaments and premises, with their appurtenances, unto the said *E. F.* and his heirs, to be holden of the lord by copy of court-roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, [heriot when it shall happen,] and other duties and services therefore due and of right accustomed. And so (saving the right of the lord) the said *E. F.* is admitted tenant thereof, and pays to the lord on such his admittance a fine [certain] of £— —, and his fealty is respited.

(Surrender to Will) (h).

(2. d). And afterwards at this same court the said *E. F.* in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, all and singular the said customary or copyhold — — hereditaments and premises, with their appurtenances, to which he hath been admitted at this court as aforesaid, to the use of such person or persons, and for such estate or estates, ends, intents and purposes, as he the said *E. F.* in and by his last will and testament in writing, already made or hereafter to be made, hath given, devised, directed, limited or appointed, or shall give, devise, direct, limit or appoint the same.

(Presentment of the death of G. H., first proclamation, and default recorded.)

(3). At this court the homage present the death of *G. H.*, late one of the customary tenants of this manor, and thereupon proclamation is made for any person or persons claiming title to the customary or copyhold hereditaments lying within and holden of this manor, whereof the said *G. H.* died seized, to come into court and be admitted, but no one comes, therefore let a second proclamation be made at the next court (i).

(Presentment of an absolute surrender, under a special deputation by the steward, from I. K. to N. O., of an undivided moiety, in consideration of an annuity, and admittance of N. O.)

(4. a). At this court the homage present that on the — day of —, now last past, *I. K.*, then late of, &c., but then of, &c., one of the customary tenants of this manor, came before *L. M.* of, &c., deputy steward, for that purpose and turn only, of the said *J. S.* (chief steward of this manor), and for and in consideration of an annuity of £—, secured to

(h) Antc, pt. 1, p. 211.

(i) No copy is necessary.

be paid to him the said *I. K.* and his assigns for his life, by *N. O.* of, &c., in such manner as is mentioned in an indenture bearing date, &c., and made between, &c., did out of court surrender into the hands of the lord of this manor, by the hands and acceptance of the said deputy steward by the rod, according to the custom of this manor; all that the one undivided moiety or equal half part of the said *I. K.* (the whole into two equal parts to be divided), of and in all, &c., and of and in the appurtenances thereunto belonging, and to which same undivided moiety and premises the said *I. K.* was admitted at a general court holden for this manor on the — day of —; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, trust, benefit, property, claim and demand whatsoever of the said *I. K.* in, to, or out of the said undivided moiety of the aforesaid hereditaments and premises, to the use of the said *N. O.*, his heirs and assigns for ever, according to the custom of this manor (*k*).

(4. *b*). Now at this court comes the said *N. O.*, and prays to be admitted to the said undivided moiety of the hereditaments and premises so surrendered to his use as aforesaid; to whom the lord of this manor, by the said steward, grants seizin thereof by the rod, to have and to hold the said undivided moiety, or equal half part, of all and singular the said — hereditaments and premises, with their appurtenances, unto the said *N. O.* and his heirs, to be holden of the lord by copy of court-roll at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *N. O.* is admitted tenant thereof, and pays to the lord for a fine on such his admittance the sum of £ — — — (*l*), and his fealty is respited. [See form of Surrender to Will, ante (2. *d*).]

(Presentment of conditional surrender from P. Q. to R. S.)

(5). At this court the homage present that on the — day of —, now last past, *P. Q.*, of, &c., one of the customary tenants of this manor, came before the said steward, and in consideration of the sum of £ —, well and truly paid to the said *P. Q.*, by *R. S.*, of, &c., did out of court surrender into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, [All, &c.] with their appurtenances, (and to which said premises the said *P. Q.* was admitted at a special court holden for this manor on the — day of —,) and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, trust, benefit, property, claim and demand whatsoever of the said *P. Q.* in, to or out of the said hereditaments and premises and every part thereof, to the use of the said *R. S.*, his heirs and assigns for ever, accord-

(*k*) The presentment of the surrender out of court should be included in the copy, but it would not require a stamp.

(*l*) The author here assumes that the fine is arbitrary.

ing to the custom of this manor, subject, nevertheless, to and upon this express condition, that if the said *P. Q.*, his heirs, executors, administrators or assigns, did and should well and truly pay, or cause to be paid, unto the said *R. S.*, his executors, administrators or assigns, the full sum of £——, of lawful money, &c., on the —— day of ——, with interest for the same, after the rate of five pounds per cent. per annum, computed from the date of the said surrender, clear of all taxes and deductions whatsoever, then such surrender was to be void and of no effect (*m*).

(*Absolute surrender from T. U. to V. W., and his admittance.*)

(6. *a*). At this court comes *T. U.*, one of the customary tenants of this manor, and in consideration of the sum of £——, of lawful money, &c., to him in hand well and truly paid by *V. W.*, of, &c., in open court, surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, [All, &c.] with their appurtenances, (and to which same premises the said *T. U.* was admitted at a general court holden for this manor on the —— day of ——,) and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, trust, benefit, property, claim and demand whatsoever of the said *T. U.*, in, to or out of the same premises and every part thereof; to the use of the said *V. W.*, his heirs and assigns for ever, according to the custom of this manor.

(6. *b*). Now at this court comes the said *V. W.*, and prays to be admitted to all and singular the said customary or copyhold hereditaments and premises so surrendered to his use at this court as aforesaid; to whom the lord of this manor, by the said steward, grants seizin thereof by the rod, to have and to hold the said —— hereditaments and premises, with their appurtenances, unto the said *V. W.* and his heirs, to be holden of the lord by copy of court-roll at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *V. W.* is admitted tenant thereof, and pays to the lord on such his admittance a fine [*certain*] of £——, and his fealty is respited. [See form of Surrender to Will, ante (2. *d*).]

(*Licence to V. W. to demise.*)

(6. *c*). And afterwards, at this court, the lord of this manor, by the said steward, doth give and grant to the said *V. W.* full licence and authority to demise and lease all and singular the said —— hereditaments and premises, with their appurtenances, to which he the said *V. W.* hath been admitted at this court as aforesaid, unto any person or persons willing to take the same as lessee or lessees of the said *V. W.*, (but not by way of mortgage,) his, her or their executors, administrators and assigns, to hold

(*m*) No copy is necessary.

for any term or number of years not exceeding twenty-one years, computed from the — day of — last, saving always to the lord or lady, lords or ladies of this manor for the time being, all and all manner of fines, heriots, rents, customs and services therefore due and of right accustomed; and for this licence the said *V. W.* hath paid for a fine the sum of £— — —, [if the custom has settled the fine, add] “according to the custom of this manor.”

(Acknowledgment by C. D. of payment and satisfaction of monies secured by the conditional surrender of A. B.) (n).

(7). At this court comes *C. D.*, of, &c. and acknowledges to have received of *A. B.*, of, &c., one of the customary tenants of this manor, the sum of £— — —, being in full of all principal and interest monies due and owing from the said *A. B.* on a conditional surrender of certain customary or copyhold hereditaments lying within and holden of this manor, made by the said *A. B.* to the said *C. D.*, on the — day of —, in the year —, for securing the principal sum of £—, with lawful interest for the same, as in the said surrender is expressed; and therefore the said *C. D.* prays that the said steward will enter satisfaction of the aforesaid principal and interest monies on the court-rolls of this manor, whereupon satisfaction is entered by the said steward accordingly.

(Presentment of warrant to enter satisfaction on a conditional surrender from A. B. to C. D.)

- (8). At this court the homage present a warrant under the hand of *C. D.*, of, &c., bearing date the — day of —, whereby the said *C. D.* did acknowledge that he had received of *A. B.*, of, &c., one of the customary tenants of this manor, the sum of £— — —, being in full of all principal and interest monies due and owing from the said *A. B.* on a conditional surrender of certain customary or copyhold hereditaments lying within and holden of this manor, made by the said *A. B.* to the said *C. D.* on the — day of —, in the year —, for securing the principal sum of £—, with lawful interest for the same, as in the said surrender is expressed; and therefore the said *C. D.* did by the said warrant authorize the steward of this manor to enter satisfaction of the aforesaid principal and interest monies on the court-rolls of this manor, whereupon satisfaction is entered by the said steward accordingly (o).

(n) No copy is necessary. The mode of entering satisfaction pursuant to this acknowledgment is for the steward to make the following note in the margin of the court-roll containing the conditional surrender, or the presentment of it, if made out of court, viz., “All principal and interest monies secured by this surrender have been discharged, as will appear by an acknowledgment made and entered

upon the rolls of a court holden for this manor on the — day of —. *J. S. steward,*” Ante, pt. 1, p. 194.

(o) The author has supposed the succeeding surrender to be from the mortgagor named in this warrant, and the entry of that surrender shows that it is not necessary to include the warrant in the copy. For the mode of entering satisfaction on the court-rolls, see sup. n. (n).

(*Surrender by A. B. (by attorney) to E. F. and his admittance.*)

(9. a). At this court comes *A. B.*, of, &c. one of the customary tenants of this manor, by *C. D.*, of, &c., his attorney in this behalf lawfully constituted, by virtue of a power of attorney under the hand and seal of the said *A. B.*, bearing date the — day of —, and intended to be inrolled at this court, and in consideration of the sum of £—, to the said *C. D.* for the use of the said *A. B.* in hand well and truly paid by *E. F.*, of, &c., in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, All, &c., with their appurtenances, and to which same premises the said *A. B.* was admitted at a general court holden for this manor on the — day of —; and the reversion, &c., and all the estate, &c., to the use of the said *E. F.* his heirs and assigns for ever, according to the custom of this manor.

(9. b). Now at this court comes the said *E. F.*, and prays, &c. [Admittance and surrender to will to follow in the form 6. b, and 2. d].

(*Surrender by G. H. (by way of settlement on his marriage) to L. M. and N. O. upon trusts, and their admittance.*)

(10. a). At this court comes *G. H.*, one of the customary tenants of this manor, and in consideration of a marriage agreed upon and intended to be shortly hereafter had and solemnized between the said *G. H.* and *I. K.*, of, &c., [or, pursuant to a covenant in this behalf contained in an indenture, bearing date, &c. being the settlement made previous to the marriage then intended, and since had and solemnised between the said *G. H.* and *I. K.* now his wife,] in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, All, &c., with their appurtenances, and to which same premises, the said *G. H.* was admitted at a special court holden for this manor, on the — day of —; and the reversion, &c., and all the estate, &c., to the use of *L. M.*, of, &c., and *N. O.*, of, &c., their heirs and assigns for ever, according to the custom of this manor; but, nevertheless, *in trust for the said G. H. and his heirs, in the mean time, and until the said intended marriage shall be had and solemnized, and immediately after the solemnization thereof* (p) upon and for the several trusts, intents, and purposes hereinafter expressed, that is to say, upon trust during the joint natural lives of the said *G. H.* and *I. K.* his intended wife, to pay the rents and profits of the said customary or copyhold hereditaments and premises, from time to time, as they shall grow due and be received, unto such person or persons, and in such manner as

(p) If the surrender be made after marriage, pursuant to articles executed previously, the words in italics to be omitted, and *I. K.* to be described throughout as *I. H.*, the wife of *G. H.*

the said *I. K.*, notwithstanding the said *intended* coverture, by any note or notes in writing, signed with her own hand, but not by way of anticipation, shall direct or appoint; and for want of such direction or appointment from time to time, upon trust to pay the same rents and profits into the proper hands of the said *I. K.* for her separate use and benefit, exclusive of the said *G. H.*, who is not to intermeddle therewith, nor are the same to be subject to his debts, control, or engagements. And it is hereby declared that the receipt and receipts of the said *I. K.*, or of such her appointee or appointees as aforesaid, shall be a good and sufficient discharge for so much of the aforesaid rents and profits as shall be therein respectively acknowledged or expressed to be received. And after the decease of either of them the said *G. H.* and *I. K.* his intended wife, then in trust for the survivor of them the said *G. H.* and *I. K.*, and his or her assigns for and during the term of his or her natural life, and from and after the decease of the survivor of the said *G. H.* and *I. K.* his intended wife, in trust for all or any such one or more of the child or children of the said *G. H.* by the said *I. K.* to be begotten, for such estate or estates, in such parts, shares, and proportions, manner and form, and with, under, and subject to such powers, provisos, restrictions and limitations over, for the benefit of any one or more of such child or children, as they the said *G. H.* and *I. K.* by any deed or deeds, writing or writings, to be by them sealed and delivered in the presence of and attested by two or more credible witnesses, shall direct or appoint; and for want of such joint direction or appointment, then as the survivor of them the said *G. H.* and *I. K.*, by any deed or deeds, writing or writings, to be by such survivor sealed and delivered in the presence of and attested by two or more credible witnesses, or by his or her last will and testament in writing, or any codicil or codicils thereto, to be legally executed, shall direct or appoint; and for want of any such direction or appointment, and as to such part of the premises concerning which no such direction or appointment shall be made, so as to be a complete disposition of the customary fee-simple and inheritance thereof and subject to any incomplete direction or appointment to be made as aforesaid, in trust for all and every the child and children of the said *G. H.* by the said *I. K.* to be begotten, equally to be divided between and amongst them, share and share alike, their respective heirs and assigns for ever, as tenants in common:—But in case there shall not be any child of the said *G. H.* by the said *I. K.*, or being such, and all and every of them shall happen to die under the age of twenty-one years, without leaving issue of his, her, or their body or respective bodies lawfully begotten him, her, or them surviving, then in trust for the survivor of the said *G. H.* and *I. K.*, his or her heirs and assigns for ever. [But if the surrender be made pursuant to a covenant in marriage articles, wherein the trusts are declared, then omit the words in italics, ante, p. 761, and all subsequent to them, and say, “ Upon and for such trusts, intents, and purposes as are expressed “ and declared concerning the same customary or copyhold hereditaments “ such premises in and by the said indenture of the — day of —,

"or such of them as are now subsisting and capable of taking effect" (q)].

(10. b). Now at this court come the said *L. M.* and *N. O.* and pray to be admitted to the said customary or copyhold hereditaments and premises, with their appurtenances, so surrendered to their use as aforesaid; *To whom* the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said — — hereditaments and premises, with their appurtenances, unto the said *L. M.* and *N. O.* and their heirs, upon and for such trusts, intents, and purposes, nevertheless, as aforesaid, to be holden of the lord by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *L. M.* and *N. O.* are admitted tenants thereof in manner and form aforesaid, and pay to the lord on such their admittance a fine [certain] of £— —, and their fealties are respited.

(Surrender by *P. Q.* and *R. S.* (trustees for sale under a surrender by *W. Y.*) to *T. V.* and his admittance.)

(11. a). At this court come *P. Q.*, of, &c., and *R. S.*, of, &c., customary tenants of this manor, and by virtue and in pursuance of the trusts reposed in them by the surrender hereinafter referred to, and in consideration of the sum of £—— to them in hand well and truly paid by *T. V.*, of, &c., in open court surrender into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, All, &c., with their appurtenances, (and to which same premises, the said *P. Q.* and *R. S.* were admitted at a general court, holden for this manor, on the — day of —, upon and under a surrender previously made thereof to their use by *W. Y.*, of, &c., late one of the customary tenants of this manor, upon the trusts, and for the intents and purposes, in the same surrender mentioned,) and the reversion, &c., and all the estate, &c., to the use of the said *T. V.*, his heirs and assigns for ever, according to the custom of this manor.

(11. b). Now at this court comes the said *T. V.*, by *X. Z.* his attorney in this behalf appointed by the court (r), and prays to be admitted to the said customary or copyhold hereditaments and premises so surrendered to his use as aforesaid, *to which* said *T. V.* (in the person of his said attorney) the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said — — hereditaments and premises, with their appurtenances, unto the said *T. V.* and his heirs, to be holden of the lord by copy of court-roll, at the will of the lord, according to the

(q) Should it be thought desirable to give the trustees a power of sale, or a power of leasing with the license of the lord, (and with the approbation of the parents or the survivor of them, and of the guardians of the children, after their

decease,) the trusts should be declared by a separate instrument containing such powers. Ante, pt. 1, pp. 185 et seq., 400, 405.

(r) Ante, pt. 1, p. 292.

custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed, and so (saving the right of the lord) the said *T. V.* (in the person of his said attorney) is admitted tenant thereof, and pays to the lord on such his admittance a fine [*certain*] of £— — —, and his fealty is respited.

(Surrender to uses by T. W. pursuant to the marriage articles of his son V. W.; and admittance of V. W. for life.)

(12. *a*). At this court comes *T. W.* one of the customary tenants of this manor, and in pursuance of certain articles executed previous to a marriage lately had and solemnized between *V. W.* (eldest son of the said *T. W.*) and *S. T.* spinster, and in consideration of the said marriage, and of the natural love and affection which the said *T. W.* hath and beareth for his said son *V. W.*, in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, All, &c., with the appurtenances, to which said hereditaments and premises the said *T. W.* was admitted at a special court holden for this manor, on the — day of —, and the reversion, &c., and all the estate, &c., to the use of the said *V. W.*, and his assigns, during the term of his life, without impeachment of any such waste as he may commit with the licence of the lord or lady, lords or ladies of this manor for the time being (*s*); and from and immediately after the decease of the said *V. W.*, to the use of the said *S. W.*, now the wife of the said *V. W.*, and her assigns, during the term of her life, with the like permission to commit waste as is hereinbefore given to the said *V. W.* (*t*); and immediately after the decease of the survivor of the said *V. W.* and *S.* his wife, to the use of the first son of the body of the said *V. W.* by the said *S.* his wife to be begotten, and the heirs of the body of such first son lawfully issuing, and for default of such issue, to the use of the second, third, fourth, and all and every other son and sons of the body of the said *V. W.* by the said *S.* his wife to be begotten, severally, successively, and in remainder one after another, as they and every of them shall be in priority of birth and seniority of age, and of the several and respective heirs of the body and bodies of all and every such son and sons lawfully issuing, the elder of such sons and the heirs of his body issuing to be always preferred, and to take before the younger of the same son and sons, and the heirs of his and their body and bodies issuing, and for default of such issue, to the use of the said *T. W.* his heirs and assigns for ever, according to the custom of this manor.

(*s*) Should the lord consent to waive his right to enter for a forfeiture of the tenant for life, a limitation is to be here inserted to trustees and their heirs for the life of *V. W.* for preserving the contingent remainders, ante, pt. 1, pp. 400 to 405.

(*t*) When a provision of this nature is meant to be in bar of dower and freebench,

that intention should be declared by a separate instrument; and if desired that the husband should have a power to jointure, or create portions on a future marriage, the legal estate should be vested in trustees, and the trusts declared by a separate instrument, to be referred to in the surrender to and admittance of the trustees. Ante, pt. 1, pp. 185 et seq., 400, 405.

(12. *b*). And at this court comes the said *V. W.*, and prays to be admitted for the term of his life, by virtue of the said surrender so made by the said *T. W.* to his use as aforesaid, and with such remainders over as in the same surrender are mentioned, to all and singular the aforesaid customary or copyhold — — hereditaments and premises, with their appurtenances; *to whom* the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said — — hereditaments and premises hereinbefore described, and so surrendered by the said *T. W.* as aforesaid, with their appurtenances, unto the said *V. W.* and his assigns, for the term of his life, and with such remainders over as aforesaid, to be holden of the lord by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed, and so (saving the right of the lord) the said *V. W.* is admitted tenant thereof, *in manner and form aforesaid*, and pays to the lord on such his admittance a fine [*certain*] of £ — — —, and his fealty is respited.

(Presentment of the deaths of V. W. and wife, Recovery suffered by J. W. their eldest son, and his admittance in fee) (u).

(13). At this court the homage present the deaths of *V. W.*, late one of the customary tenants of this manor, and *S. W.* his wife, leaving *J. W.*, of, &c. their eldest son, who by virtue of a certain surrender made by *T. W.*, the father of the said *V. W.*, at a court holden for this manor on the — day of —, is now tenant in tail general in possession, according to the custom of this manor, of all and singular the customary or copyhold hereditaments hereinafter described, and to which the said *V. W.* was admitted at the last mentioned court for the term of his life, with such remainders over as were expressed in the aforesaid surrender.

Now at this court comes the said *J. W.*, and in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, all, &c. with their appurtenances, and the reversion, &c., and all the estate, &c., to the use of *B.*, his heirs and assigns for ever, according to the custom of this manor, and for the purpose of suffering a common recovery of the said hereditaments and premises, in the manner hereinafter mentioned, *to which* said *B.*, (being present here in court,) the lord of this manor, by the said steward, grants seizin of the same premises by the rod, *to have and to hold* the said messuages, tenements, hereditaments and premises, with their

(u) The author has thought it right to show in the present edition the mode of barring entails of copyholds prior to the Act of 3 & 4 W. 4, c. 74, (passed the 28th Aug. 1833,) for abolishing common recoveries and plaints in nature thereof.

The various forms suggested (as acts in court) by the provisions of the above statute, as well for the purpose of a dispo-

sition in fee by a tenant in tail in possession, and by a tenant in tail in remainder, with the consent of the tenant for life, (the protector of the settlement,) as for acquiring a base fee when the tenant for life is not concurring, will be found at the beginning of the rolls of the second court, post.

appurtenances, unto the said *B.* and his heirs by copy of court-roll at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *B.* is admitted tenant thereof, but he pays no fine to the lord for such his admittance, because this estate is only had for further assurance, and his fealty is respited.

And afterwards (sitting the court) comes *C.*, of, &c., and in full and open court makes his plaint against the said *B.* of a plea of land of the tenements aforesaid, by the names and descriptions of — messuages, — stables, — orchards, — gardens, — acres of land, — acres of meadow and — acres of pasture, with the appurtenances within this manor and the jurisdiction of this court, and makes protestation to prosecute his plaint in this court in the form and nature of a writ of entry *sur disseizin en le post* at common law, according to the custom of this manor, and finds pledges to prosecute, to wit, John Doe and Richard Roe, whereupon the said *B.* being present here in court, prays leave to make answer to the said *C.* without further process, and it is granted to him.

And thereupon the said *C.* in person demands against the said *B.* the tenements aforesaid, with their appurtenances, as his right and inheritance, and saith that he was seized of the same in his demesne as of fee and right, at the will of the lord, according to the custom of this manor, in time of peace, in the time of our lord the king that now is, by taking the profits or esplees thereof to the value, &c.; and into which the said *B.* hath not entry but after the disseizin which Hugh Hunt unjustly and without judgment made upon the said *C.* within thirty years last past, and therefore prosecutes his plaint, &c.

And thereupon the said *B.*, present here in court, defends his right, when, &c., and voucheth to warrant the said *J. W.* who (present here in court) enters into the warranty and freely warrants the tenements aforesaid, with their appurtenances, to the said *B.*

And thereupon the said *C.* demands against the said *J. W.*, tenant by his own warranty, the tenements aforesaid, with their appurtenances, in form aforesaid, and saith that he was seized of the same in his demesne as of fee and right, at the will of the lord, according to the custom of this manor, in time of peace, in the time of our lord the king that now is, by taking the profits or esplees thereof to the value, &c., and into which, &c., and therefore prosecutes his plaint, &c.

Whereupon the said *J. W.*, present here in court, defends his right, when, &c., and voucheth to warrant *D.*, who also, present here in court, enters into the warranty and freely warrants the tenements aforesaid, with their appurtenances, to the said *J. W.*

And thereupon the said *C.* demands against the said *D.*, tenant by his own warranty, the tenements aforesaid, with their appurtenances, in form aforesaid, and saith that he was seized of the same in his demesne as of fee and right, at the will of the lord, according to the custom of this manor, in time of peace, in the time of our lord the king that now is, by taking the

profits or esplees thereof to the value, &c., and into which, &c., and therefore prosecutes his plaint, &c.

And the said *D.*, tenant by his own warranty, defends his right, when, &c., and saith that the said Hugh Hunt did not disseize the said *C.* of the tenements aforesaid, with their appurtenances, as he by his plaint and declaration above doth allege; and of this he puts himself upon the homage (x). And the said *C.* craves leave to imparle until a quarter before four of the clock of the afternoon of this day, and it is granted to him by the court, and the same hour is given to the said *D.*

And afterwards, at the said hour, the said *C.* cometh into court in person, but the said *D.*, although solemnly called, cometh not again, but departeth in contempt and maketh default, therefore it is considered and adjudged by the court that the said *C.* do recover his seizin against the said *B.* of the tenements aforesaid, with their appurtenances; and that the said *B.* have of the customary lands and tenements of the said *J. W.* within this manor and the jurisdiction of this court, to the value, &c.; and that the said *J. W.* have of the customary lands and tenements of the said *D.* within this manor and the jurisdiction of this court, to the value, &c. And the said *D.* in mercy, &c.

And thereupon the said *C.* prays the lord's precept, according to the custom of this manor, to be directed to *W. Y.*, bailiff of this manor, to cause full seizin of the tenements aforesaid, with their appurtenances, to be delivered to him, which is granted accordingly, returnable here forthwith.

And afterwards, (sitting the court,) the said *W. Y.* and *C.* come again into court, and the said *W. Y.* certifies to the court that by virtue of the said precept to him directed he hath caused full seizin of the tenements aforesaid, with their appurtenances, to be delivered to the said *C.*, as by the said precept he was commanded, &c.

Whereupon the said *C.* prays to be admitted tenant thereof, to whom the lord of this manor by the said steward grants seizin thereof by the rod, *to have and to hold* all and singular the said messuages or tenements, hereditaments and premises, with their appurtenances, unto the said *C.* and his heirs, *to be holden* of the lord by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *C.* is admitted tenant thereof, but he pays no fine, because, &c., and his fealty is respited.

And afterwards at this same court the said *C.* and *B.*, in their own proper persons, surrender into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, and also release all and singular the said messuages or tenements, hereditaments and premises, with their appurtenances, so re-

(x) This was of the same force as a tenant's putting himself on the grand assize at common law. See *Stafford's case*, Dy. 111, b.

covered, and to which the said *C.* hath been so admitted as aforesaid; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title and interest whatsoever of them the said *C.* and *B.*, and each or either of them, in and to the same premises and every part thereof, to the use of the said *J. W.*, his heirs and assigns for ever, according to the custom of this manor. To which said *J. W.*, the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said messuages or tenements, hereditaments and premises, with their and every of their appurtenances, unto the said *J. W.* and his heirs, to be holden of the lord by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient rent or rents and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *J. W.* is admitted tenant thereof in manner and form last aforesaid, and pays to the lord on such his admittance a fine certain of £ — — —. [*But if J. W. had been admitted in tail and paid a fine to the lord, then the entry would have been, "but he pays no fine to the lord on such his admittance, having paid a fine on his admittance in tail at this court,"*] (*z*), and his fealty is respited.

[Here follows the power of attorney, from the said *A. B.* to the said *C. D.* (see 9. a).]

Know all men, &c. [the power to be copied verbatim].

Examined by me,
J. S., steward.

SECOND COURT.

The manor of ——— } A general Court Baron of *A. Z.*, lord, &c. [*for*
in the county of ——— } *the manner of entering the title of the court, &c.,*
and the names of the homage, see ante, p. 755.]

(*Admittance of A. B., tenant in tail in possession; surrender by him in order to acquire an absolute customary fee; and his admittance and surrender to will.*)

(1. *a*). At this court the homage present that *T. W.*, late one of the customary tenants of this manor, and whose death was presented at the last general court, in and by his last will and testament in writing, bearing date, &c. (the probate whereof is produced in court), gave and devised all his customary or copyhold hereditaments within this manor, by the description of, &c., unto the said *A. B.* and the heirs of his body, with certain remainders over.

Now at this court comes the said *A. B.*, and prays to be admitted to the customary or copyhold hereditaments lying within and holden of this manor so devised to him as aforesaid, to wit, to all, &c., (to which said hereditaments the said *T. W.* was admitted at a court holden for this manor on the — day of —,) to which said *A. B.*, the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the

(*z*) Ante, pt. 1, p. 347.

said customary or copyhold — — hereditaments and premises, with their appurtenances, unto the said *A. B.* and the heirs of his body, according to the form and effect of the devise so made to him as aforesaid, to be holden of the lord by copy of court-roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed, and so (saving the right of the lord) the said *A. B.* is admitted tenant thereof, in manner and form aforesaid, and pays to the lord for a fine on such his admittance the sum of £ — —, and his fealty is respited.

(1. *b*). And afterwards at this court comes again the said *A. B.*, and for the purpose of barring and extinguishing the estate tail of and in the said hereditaments and premises to which he the said *A. B.* is so entitled as aforesaid, and all remainders and reversions expectant thereupon, and of vesting the same premises in him the said *A. B.* and his heirs absolutely, according to the custom of this manor, and by virtue and in pursuance of the provisions in this behalf contained in an Act of Parliament passed in the 4th year of the reign of his majesty King William the Fourth, for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance (*d*), did in open court surrender into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, all and singular the — — hereditaments and premises hereinbefore described, with the appurtenances to the same premises belonging or appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, benefit, power, claim and demand whatsoever of the said *A. B.* in, to or out of the same premises and every part thereof, to the use of him the said *A. B.*, his heirs and assigns for ever, according to the custom of this manor.

(1. *c*). To which said *A. B.*, upon his prayer, the lord of this manor, by the said steward, grants seizin of the said premises by the rod, *to have and to hold* the said customary or copyhold — — hereditaments and premises, with their appurtenances, unto the said *A. B.* and his heirs, to be holden of the lord by copy of court-roll at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *A. B.* is admitted tenant thereof in manner and form last aforesaid, and pays to the lord for a fine on such his admittance the sum of £ — —, and his fealty is respited.

(1. *d*). And at this court the said *A. B.* in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, all and singular the said customary or copyhold — — hereditaments and premises, with their appurtenances, to which he the said *A. B.* hath been admitted tenant for an estate in customary fee simple at this court as aforesaid, to

(*d*) See sects. 15, 40, 50.

the use of such person or persons, and for such estate or estates, ends, intents and purposes as he the said *A. B.*, in and by his last will and testament in writing already made, or hereafter to be made, hath given, devised, directed, limited or appointed, or shall give, devise, direct, limit or appoint the same.

(*Admittance of A. B., tenant for life, and of C. D., tenant in tail in remainder; surrender by them to E. F., a purchaser; and his admittance, and surrender to will.*)

(2. a). At this court the homage present that *R. S.*, late one of the customary or copyhold tenants of this manor, and whose death was presented at a court holden for this manor on the — day of —, in and by his last will and testament in writing, bearing date, &c., (the probate whereof is produced at this court,) gave and devised all his customary or copyhold hereditaments, holden of this manor, by the description of, &c., unto *A. B.*, of, &c., and his assigns, during the term of his natural life, and from and immediately after the decease of the said *A. B.*, unto *C. D.*, of, &c., and the heirs of his body, with divers remainders over.

Now at this court come the said *A. B.* and *C. D.*, and pray to be admitted respectively, according to the form and effect of the devise so made to them by the said will of the said *R. S.* deceased, to the customary or copyhold hereditaments lying within and holden of this manor, whereof the said *R. S.* so died seized as aforesaid, to wit, to All, &c. with the appurtenances, (to which same premises the said *R. S.* was admitted at a court holden for this manor on the — day of —,) to which said *A. B.* and *C. D.*, the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said — — hereditaments and premises, with their appurtenances, unto the said *A. B.* and his assigns for the term of his natural life, and from and immediately after his decease unto the said *C. D.* and the heirs of his body, according to the form and effect of the devise so made to them the said *A. B.* and *C. D.* respectively, by the said will of the said *R. S.* deceased as aforesaid, to be holden of the lord by copy of court-roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed, and so (saving the right of the lord) the said *A. B.* and *C. D.* are admitted tenants thereof for such estates and interests, and in such manner and form as aforesaid, and pay to the lord for a fine on such their admittance the sum of £— — — (e), and their respective fealties are respited.

(2. b). And at this court come again the said *A. B.* and *C. D.*, and for the purpose of barring and extinguishing the said estate tail of and in the hereditaments and premises hereinbefore described, to which the said *C. D.* is so entitled as aforesaid, and all remainders and reversions expectant thereupon, and of conveying and assuring the same hereditaments and premises, with their appurtenances, to the use of *E. F.*, of, &c., his

(e) If by the custom of the manor remainder-men are to be admitted separately from the tenant for life, and to pay a dis-

tingent fine, then say, "and pay to the lord for fines on such their admittance respectively as in the margin."

heirs and assigns for ever, according to the custom of this manor, pursuant to a contract for sale lately entered into by the said *A. B.* and *C. D.* with him the said *E. F.*, and for and in consideration of the sum of £—— of lawful money of the United Kingdom of Great Britain and Ireland, current in England, to them the said *A. B.* and *C. D.* in hand well and truly paid by the said *E. F.* at the time of making this surrender; and by virtue and in pursuance of the provisions in this behalf contained in an Act of Parliament passed in the 4th year of the reign of his majesty King William the Fourth, for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance (*f*), in open court surrender into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, all and singular the customary or copyhold —— hereditaments and premises hereinbefore described, and to which the said *A. B.* and *C. D.* respectively have been so admitted at this court as aforesaid, with the appurtenances to the same premises belonging or appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, benefit, power, claim and demand whatsoever of the said *A. B.* and *C. D.* respectively in, to or out of the same premises and every part thereof, to the use of the said *E. F.* his heirs and assigns for ever, according to the custom of this manor.

(2. *c. & d.*) And at this court comes the said *E. F.*, and prays to be admitted to the said customary or copyhold hereditaments and premises, with the appurtenances, so surrendered to his use at this court as aforesaid, to whom the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said —— hereditaments and premises, with their appurtenances, unto the said *E. F.* and his heirs, to be holden of the lord by copy of court-roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *E. F.* is admitted tenant thereof, and pays to the lord for a fine on such his admittance the sum of £—— —, and his fealty is respited. [Surrender to will to follow as in the last precedent.]

(*Surrender by C. B., tenant in tail in remainder, to the use of himself in fee, with the consent of the tenant for life, (the protector of the settlement,) and admittance of C. B. to the remainder in fee.*)

(3. *a.*) At this court comes *C. B.*, first and eldest son of *A. B.*, of, &c., and also the said *A. B.*, (the said *C. B.* being seized of and well intitled to the customary or copyhold hereditaments hereinafter described, with their appurtenances, for a customary estate in tail general in remainder, expectant on the decease of the said *A. B.*, under and by virtue of the limitations contained in [state whether under a surrender by way of settlement, or a will], to which same hereditaments the said *A. B.* was admitted

(*f*) See sects. 15, 22, 40, 42, 50, 52.

for his life by virtue of the same [surrender or will] at a court held for this manor on the — day of — (g),) and the said C. B., for the purpose of acquiring a base customary fee in the said hereditaments and premises, and with the consent of the said A. B., signified openly in court immediately previous to the acceptance of this surrender, in compliance with the direction in that behalf contained in an Act of Parliament passed in the 4th year of the reign of his majesty King William the Fourth, for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance (h), did in open court surrender into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, All, &c. with the appurtenances to the same premises belonging or appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, use, trust, benefit, power, claim and demand whatsoever of the said C. B. in, to, or out of the same premises and every part thereof, to the use of the said C. B. his heirs and assigns for ever, according to the custom of this manor.

(3. b). To which said C. B., upon his prayer, the lord of this manor, by the said steward, grants seizin of the said premises by the rod, *to have and to hold* the said — — hereditaments and premises, with their appurtenances, unto the said C. B. and his heirs, in remainder, expectant and to take effect in possession on the decease of the said A. B., to be holden of the lord, by copy of court-roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said C. B. is admitted tenant thereof in manner and form last aforesaid, and pays to the lord on such his admittance a fine [certain] of £— — —, and his fealty is respited (i).

(Admittance of C. B., tenant in tail in remainder, and surrender to the use of himself in fee, with the consent of the tenant for life; and admittance of C. B. to the remainder in fee, and his surrender to will.)

(4. a). At this court comes C. B., first and eldest son of A. B., of, &c., and prays to be admitted for a customary estate in tail general in remainder expectant on the decease of the said A. B., under and by virtue of the limitations contained in [state whether under a surrender by way of settlement, or a will], to All, &c. with the appurtenances thereof, to which same hereditaments the said A. B. was admitted for his life by virtue of the aforesaid [surrender or will], at a court held for this manor the — day of —; to which said C. B., the lord of this manor, by the said

(g) This form assumes that the surrender or will referred to was fully presented and enrolled on the admittance of A. B., and that C. B. was in the seizin, under the rule, that the admittance of the tenant for life is the admittance of the persons entitled in remainder.

See the next precedent for effecting the same object as the present one, but which supposes a custom for tenants in remainder to be admitted.

(h) See sects. 22, 52.

(i) Then may follow a surrender to will, as in the next precedent.

steward, grants seizin thereof by the rod, *to have and to hold* the said — — hereditaments and premises, with their appurtenances, unto the said *C. B.* and the heirs of his body, in remainder expectant and to take effect in possession on the decease of the said *A. B.*, to be holden of the lord, by copy of court-roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *C. B.* is admitted tenant thereof, in manner and form aforesaid, and pays to the lord on such his admittance a fine certain of £ — —, and his fealty is respited.

(4. *b*). And afterwards at this court comes the said *C. B.*, and also the said *A. B.*, and the said *C. B.*, for the purpose of barring and extinguishing the estate tail in remainder of and in the said hereditaments and premises, to which he is so intitled as aforesaid, and all remainders and reversions expectant thereupon, and of vesting the same premises in him the said *C. B.* and his heirs absolutely in remainder expectant on the decease of the said *A. B.*, and with the consent of the said *A. B.*, signified openly in court immediately previous to the acceptance of this surrender, in compliance with the direction in that behalf contained in an act of parliament passed in the 4th year of the reign of his majesty King William the Fourth for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance (*k*), did in open court surrender into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, all and singular the — — hereditaments and premises hereinbefore described, with the appurtenances to the same premises belonging or appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, benefit, power, claim, and demand whatsoever of the said *C. B.* in, to, or out of the same premises and every part thereof, to the use of him the said *C. B.* his heirs and assigns for ever, in remainder as aforesaid, according to the custom of this manor.

(4. *c*). To which said *C. B.*, upon his prayer, the lord of this manor, by the said steward, grants seizin of the said premises by the rod, *to have and to hold* the said — — hereditaments and premises, with their appurtenances, unto the said *C. B.* and his heirs, in remainder expectant and to take effect in possession on the decease of the said *A. B.*, to be holden of the lord by copy of court-roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services, therefore due and of right accustomed; and so (saving the right of the lord) the said *C. B.* is admitted tenant thereof in manner and form last aforesaid, and pays to the lord on such his admittance a fine [certain] of £ — —, and his fealty is respited.

(4. *d*). And afterwards at this court the said *C. B.* in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, all and singular the said customary or copyhold — — hereditaments and

(*k*) See s. 22, 52.

premises with their appurtenances, to which he the said *C. B.* hath been admitted tenant, for an estate in remainder in customary fee simple, at this court as aforesaid, to the use of such person or persons, and for such estate or estates, ends, intents and purposes, as he the said *C. B.* in and by his last will and testament in writing, already made or hereafter to be made, hath given, devised, directed, limited or appointed, or shall give, devise, direct, limit or appoint the same.

(Surrender by C. D. tenant in tail in remainder, in order to acquire a base fee; and his admittance accordingly; and surrender to will.)

(5. a). At this court comes *C. D.* of, &c., who by virtue of a surrender made at a court held for this manor on the — day of —, and of the admittance at the same court of *A. B.* of, &c., to the customary or copyhold — — and hereditaments hereinafter described, for an estate for the term of his life (*l*), is now seized of the same hereditaments for an estate to him the said *C. D.* and the heirs male of his body, in remainder expectant and to take effect in possession on the decease of the said *A. B.*, with several remainders over, and for the purpose of acquiring a base fee in the same customary or copyhold hereditaments, by virtue and in pursuance of the provisions contained in an act of parliament passed in the 4th year of the reign of his Majesty King William the Fourth for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance (*m*), in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, All, &c. with the appurtenances to the same premises belonging or appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, benefit, power, claim and demand whatsoever of the said *C. D.* in, to, or out of the same premises, and every part thereof, to the use of him the said *C. D.* his heirs and assigns for ever, in remainder, expectant and to take effect in possession on the decease of the said *A. B.*, and according to the custom of this manor.

(5. b). And at this court comes again the said *C. D.* and prays to be admitted to the said customary or copyhold hereditaments in remainder, and according to the form and effect of the surrender so made thereof by him at this court as aforesaid, to whom the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said customary or copyhold — — and hereditaments with their appurtenances, unto the said *C. D.* and his heirs, in remainder as aforesaid, to be holden of the lord by copy of court-roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents and other duties and services therefore due and of right accustomed, and so (saving the right of the lord) the said *C. D.* is admitted tenant thereof in remainder in manner and form aforesaid, and he pays to the lord for a fine on such his admittance the sum of £— — —, and his fealty is respited.

(*l*) The next precedent assumes that men to be admitted.
there is a special custom for remainder-

(*m*) Sec s. 15, 40, 50.

(5. c). And afterwards at this court the said *C. D.* surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, All and singular the said customary or copyhold — — hereditaments and premises, with their appurtenances, to the use of such person or persons, and for such estate or estates, ends, intents and purposes, as he the said *C. D.* in and by his last will and testament in writing, already made or hereafter to be made, hath given, devised, directed, limited or appointed, or shall give, devise, direct, limit or appoint the same.

(Admittance of C. D., tenant in tail in remainder, and surrender, in order to acquire a base fee; and admittance to the base fee.)

(6. a). At this court the homage find and present that at a court holden for this manor on the — day of —, *A. B.*, of, &c., was admitted to the customary or copyhold — — and hereditaments hereinafter described, for the term of his life, under and by virtue of the limitations contained in the last will and testament of *T. W.*, late of, &c., deceased, presented and inrolled at the last-mentioned court, and by which said will the same customary or copyhold hereditaments were devised, from and after the decease of the said *A. B.*, unto *C. D.*, of, &c., and the heirs male of his body lawfully issuing, with certain remainders over.

Now at this court comes the said *C. D.*, and prays to be admitted for a customary estate in tail male in remainder, expectant on the decease of the said *A. B.*, under and by virtue of the limitations contained in the said will of the said *T. W.* deceased, to All, &c. with the appurtenances, to which said *C. D.* the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said — — hereditaments and premises, with the appurtenances, unto the said *C. D.* and the heirs male of his body, in remainder, expectant and to take effect in possession on the decease of the said *A. B.*, to be holden of the lord by copy of court-roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed, and so (saving the right of the lord) the said *C. D.* is admitted tenant thereof in manner and form aforesaid, and pays to the lord for a fine on such his admittance the sum of £— —, and his fealty is respited.

(6. b). And afterwards at this court comes again the said *C. D.*, and for the purpose of acquiring a base fee in the said customary or copyhold hereditaments, by virtue and in pursuance of the provisions contained in an act of parliament, passed in the 4th year of the reign of his majesty King William the Fourth, for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance (*n*), in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, All and singular the said — — hereditaments and premises hereinbefore described, and to which the said *C. D.* hath been so admitted at this court as afore-

(*n*) See as in the last note.

said, with the appurtenances to the same premises belonging or appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, benefit, power, claim, and demand whatsoever of the said *C. D.*, in, to or out of the same premises and every part thereof, to the use of him the said *C. D.* his heirs and assigns for ever, according to the custom of this manor. [Admittance and surrender to will to follow as in the last precedent.]

(Surrender by a feme covert intitled to an equitable estate tail, and her husband, in order to acquire an equitable customary fee simple).

(7). At this court the homage find and present, that at a court held for this manor on the — day of —, the customary or copyhold — and hereditaments hereinafter described, were surrendered by *A. B.* of, &c. (since deceased), to the use of *C. D.* of, &c. and *E. F.* of, &c. their heirs and assigns for ever, according to the custom of this manor, upon the trusts expressed and declared in an indenture bearing date, &c. and made between the said *A. B.* of the first part, *H. H.* of, &c. spinster (since deceased) of the second part, and the said *C. D.* and *E. F.* of the third part, and inrolled at the said last mentioned court (*o*), (being the settlement made previously to a marriage duly had and solemnized between the said *A. B.* and *H. H.*), and that at the same court the said *C. D.* and *E. F.* were admitted tenants of the same customary or copyhold hereditaments upon the trusts of the said settlement. And the homage also find and present, that *M. B.* the only daughter of the said *A. B.* and *H.* his wife, by virtue of the trusts of the aforesaid settlement, became, on the decease of the survivor of the said *A. B.* and *H.* his wife, *equitably* intitled in possession to the said customary or copyhold hereditaments hereinafter described for an estate to her the said *M. B.*, and the heirs of her body; and that the said *M. B.* lately intermarried with and is now the wife of *R. W.* of, &c.

Now at this court come the said *R. W.* and *M.* his wife, and for the purpose of barring the equitable estate tail, to which she the said *M. W.* is so intitled as aforesaid, of and in the customary or copyhold — — and hereditaments hereinafter described, with their appurtenances, and all remainders and reversions expectant thereupon, and of vesting the same hereditaments and premises in the said *M. W.* for an equitable estate in fee simple, according to the custom of this manor, by virtue and in pursuance of the provisions contained in an act of parliament passed in the 4th year of the reign of his majesty King William the Fourth, for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance, and the said *M. W.* being first examined by the said steward separately and apart from her said husband, and freely and voluntarily consenting thereto (*p*), in open court surrender into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the

(*o*) If the settlement should not have been previously presented and inrolled, this presentment should embrace so much of the limitations and trusts of the deed,

as will establish the claim of the feme covert to an *equitable* estate tail.

(*p*) See *infra*, n. (*r*).

rod, according to the custom of this manor, All, &c. with the appurtenances to the same premises belonging or appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, benefit, power, claim and demand whatsoever of the said *R. W.* and *M.* his wife, respectively, in, to, or out of the same premises and every part thereof, to the use of the said *M. W.*, her heirs and assigns for ever, according to the custom of this manor (*q*).

(*Surrender by a feme-covert, equitably intitled in fee-simple, and her husband, to a purchaser*) (*r*).

(8). At this court the homage find and present, that *A. B.*, of, &c., late one of the customary or copyhold tenants of this manor, in and by his last will and testament in writing, bearing date the — day of —, (the probate whereof is produced at this court,) gave and devised all his messuages, lands, and hereditaments, lying within and holden of this manor, and therein mentioned to have been surrendered to the uses of his will, unto *C. D.*, of, &c., and *E. F.*, of, &c., their heirs and assigns, upon the trusts therein mentioned, in the mean time and until his (the said testator's) daughter *H. B.* should attain the age of twenty-one years, and when and so soon as she should attain that age, then in trust for his said daughter *H. B.* her heirs and assigns for ever. And the homage also present, that the said *A. B.* afterwards departed this life, and that the said will was proved by the executors therein named, in the Prerogative Court of Canterbury, on or about the — day of —. And they further present, on the production of the certificate of the baptism of the said *H. B.*, that she attained the age of twenty-one years on the — day of —. And the homage also present, that the said *H. B.* lately intermarried with and is now the wife of *G. H.*, of, &c.

Now at this court come the said *G. H.* and the said *H. H.* his wife, and in consideration of the sum of £— — of lawful money of the united kingdom of Great Britain and Ireland, current in England, to them the said *G. H.* and *H. H.* his wife in hand well and truly paid by *I. K.*, of, &c., and the said *H. H.* being first examined by the said steward separately and apart from her said husband, and freely and voluntarily consenting thereto, in open court, surrender into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, accord-

(*q*) The author apprehends that the admittance of *M. W.* under this surrender is unnecessary.

(*r*) A surrender (under the private examination of the steward as to voluntary consent) is the proper mode of conveying the *equitable* interest of a married woman in copyhold lands, whether such interest be an estate in fee or fee tail, see s. 90 of 3 & 4 Will. 4, c. 74, ante, pt. 1, p. 61; pt.

2, pp. 748, n. (*y*), 750, 751. But a married woman may bar an *equitable estate tail* in copyholds, by deed, to be entered on the court rolls, see ss. 53, 54; and an *equitable estate in fee* in copyholds of a married woman may be conveyed *by deed*, see s. 77; but in each of the latter cases the deed would require to be acknowledged, under the 79th section of the above act. Ante, pt. 1, pp. 57, 61.

ing to the custom of this manor, All, &c., with the appurtenances to the same premises belonging or appertaining; to which same premises the said *C. D.* and *E. F.* were admitted at a court holden for this manor on the — day of —, upon the trusts of the said will of the said *A. B.* deceased, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, benefit, power, claim and demand whatsoever of the said *G. H.* and *H. H.* his wife respectively, in, to, or out of the same premises and every part thereof, to the use of the said *I. K.*, his heirs and assigns for ever, according to the custom of this manor (*s*).

(Presentment of Surrender by C. D., tenant in tail in remainder, with the consent of the protector of the settlement, for the purpose of acquiring an estate in fee simple; and admittance of C. D. to the remainder in fee; and surrender to will.)

(9. a). At this court the homage present, that on the — day of —, *C. D.*, of, &c., claiming to be intitled to the customary or copyhold hereditaments hereinafter described for an estate to him and the heirs of his body in remainder, expectant on the decease of *A. B.*, of, &c., under and by virtue of the limitations contained in the [state whether a surrender by way of settlement or a will], came before *W. B.*, deputy steward for that purpose and turn only of the said *J. S.*, chief steward of this manor, and, for the purpose of barring and extinguishing the said estate tail to which the said *C. D.* was so intitled as aforesaid of and in the same hereditaments, and all remainders and reversions expectant thereupon, and of vesting the same hereditaments in the said *C. D.* and his heirs absolutely in remainder, from and after the decease of the said *A. B.*, according to the custom of this manor, did, out of court, with the consent of the said *A. B.*, signified by his signature to the memorandum of the same, in compliance with the direction in that behalf contained in an act of parliament passed in the fourth year of the reign of his majesty King William the Fourth, for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance, surrender into the hands of the lord of this manor, by the hands and acceptance of the said deputy steward by the rod, according to the custom of this manor, All, &c., with the appurtenances to the same premises belonging or appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, benefit, power, claim and demand whatsoever, of the said *C. D.*, in, to, or out of the same premises and every part thereof, to the use of him the said *C. D.*, his heirs and assigns for ever, according to the custom of this manor.

Now at this court comes the said *C. D.*, and prays to be admitted to the

(*s*) An admittance would not be necessary in this case.

In order to acquire the legal customary interest, it would be requisite for *I. K.* to

be admitted under a surrender to be made to him by *C. D.* and *E. F.* the devisees in trust.

said hereditaments and premises, according to the form and effect of the aforesaid surrender, to whom the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* all and singular the said — — hereditaments and premises, with their appurtenances, unto the said *C. D.* and his heirs, in remainder expectant and to take effect in possession on the decease of the said *A. B.*, to be holden of the lord, by copy of court-roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed, and so (saving the right of the lord) the said *C. D.* is admitted tenant thereof, in manner and form last aforesaid, and pays to the lord on such his admittance a fine [*certain*] of £— — —, and his fealty is respited.

(9. *b*). And afterwards at this same court the said *C. D.* in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, All and singular the said customary or copyhold — — hereditaments and premises, with their appurtenances, to which he the said *C. D.* hath been admitted tenant for an estate in remainder in fee simple at this court as aforesaid, to the use of such person or persons, and for such estate or estates, ends, intents and purposes as he the said *C. D.*, in and by his last will and testament in writing already made or hereafter to be made, hath given, devised, directed, limited or appointed, or shall give, devise, direct, limit or appoint the same.

(*Presentment of Surrender by C. D., tenant in tail in remainder, in order to acquire a base fee; and admittance to the base fee.*)

(10). At this court the homage find and present that at a court holden for this manor on the — day of —, *A. B.*, of, &c., was admitted to the customary or copyhold — — and hereditaments hereinafter described for the term of his life, under and by virtue of the limitations contained in the last will and testament of *T. W.*, late of, &c., deceased, presented and inrolled at the last-mentioned court, and by which said will the same customary or copyhold hereditaments were devised, from and after the decease of the said *A. B.*, unto *C. D.*, of, &c., and the heirs male of his body lawfully issuing, with certain remainders over(*t*). And the homage also present that on the — day of —, the said *C. D.* came before the said steward, and for the purpose of acquiring a base customary fee in the said hereditaments hereinafter described, by virtue and in pursuance of the provisions contained in an act of parliament passed in the fourth year of the reign of his majesty King William the Fourth, for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance, did out of court surrender into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, All, &c., with the appurtenances to

(*t*) If *C. D.* were admitted under a special custom controlling the rule that the admittance of the tenant for life is the

admittance of all persons intitled in remainder, such separate admittance of *C. D.* must also be presented.

the same premises belonging or appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, benefit, power, claim and demand whatsoever of the said *C. D.*, in, to, or out of the same premises and every part thereof, to the use of him the said *C. D.*, his heirs and assigns for ever, according to the custom of this manor.

Now at this court comes the said *C. D.*, and prays to be admitted to the said customary or copyhold hereditaments and premises according to the form and effect of the surrender so made thereof by him as aforesaid, to whom the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* all and singular the said — — hereditaments and premises, with their appurtenances, unto the said *C. D.* and his heirs in remainder, expectant and to take effect in possession on the decease of the said *A. B.*, to be holden of the lord by copy of court-roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed, and so (saving the right of the lord) the said *C. D.* is admitted tenant thereof in manner and form last aforesaid, and pays to the lord for a fine on such his admittance the sum of £— —, and his fealty is respited. [Surrender to will to follow.]

(Presentment of Surrender by a feme covert, tenant in tail, and her husband, in order to acquire an absolute customary fee, and admittance of the feme covert in fee.)

(11). At this court the homage present that on the — day of —, *E. F.*, of, &c., and *C.* his wife, came before the said steward, and for the purpose of barring and extinguishing the estate tail of and in the customary or copyhold hereditaments hereinafter described, to which the said *C. F.* was intitled by virtue of the last will and testament of her father *A. B.*, late of, &c., deceased, bearing date, &c., and of her admittance to the same hereditaments, at a court holden for this manor on the — day of —, and all remainders and reversions expectant thereupon, and of vesting the same hereditaments in the said *C. F.* and her heirs absolutely according to the custom of this manor, the said *C. F.* being first examined by the said steward separately and apart from her said husband, and freely and voluntarily consenting thereto, did, by virtue and in pursuance of the provisions contained in an act of parliament passed in the fourth year of the reign of his majesty King William the Fourth, for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance (*u*), surrender into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, All, &c., with the appurtenances to the same premises belonging or appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, benefit, power, claim and demand whatsoever of the said *E. F.* and *C.* his

(*u*) See s. 50, 77, 90.

wife respectively, in, to, or out of the same premises and every part thereof, to the use of the said *C. F.*, her heirs and assigns for ever, according to the custom of this manor.

Now at this court comes the said *C. F.*, and prays to be admitted to the said customary or copyhold hereditaments and premises, according to the form and effect of the surrender so made thereof by the said *E. F.* and her the said *C. F.* his wife, as aforesaid, to which said *C. F.* the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* all and singular the said — — hereditaments and premises, with their appurtenances, unto the said *C. F.* and her heirs, to be holden of the lord by copy of court-roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed, and so (saving the right of the lord) the said *C. F.* is admitted tenant thereof, in manner and form last aforesaid, and the said *E. F.* and *C.* his wife, pay for a fine on such the admittance of her the said *C. F.* the sum of £— — —, and her fealty is respited.

(Presentment of Surrender by a feme covert equitably intitled in remainder in fee, and her husband, to a purchaser.)

(12). At this court the homage present that on the — day of —, *L. M.*, of, &c., and *J.* his wife, (the said *J. M.* claiming to be *equitably* intitled to the hereditaments hereinafter described for an estate to her and her heirs in remainder, expectant on the decease of *H. B.*, the widow of *A. B.*, late of, &c., deceased, under and by virtue of the last will and testament of the said *A. B.*, whereby the same hereditaments were devised by him to *C. D.*, esquire, and *E. F.*, gentleman, their heirs and assigns, upon the trusts therein mentioned,) and for carrying into effect a contract or agreement lately made and entered into by them the said *L. M.* and *J.* his wife with *N. O.*, of, &c., and in consideration of the sum of £— — —, of lawful money of the united kingdom of Great Britain and Ireland, current in England, unto the said *L. M.* and *J.* his wife in hand well and truly paid by the said *N. O.*, at the time of making the same surrender, and the said *J. M.* being first examined by the said steward separately and apart from her said husband, and freely and voluntarily consenting thereto, did, by virtue and in pursuance of the provisions contained in an act of parliament passed in the fourth year of the reign of his majesty King William the Fourth, for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance (*x*), surrender into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, All, &c., with the appurtenances to the same premises belonging or appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, benefit, power, claim and demand whatsoever of the said *L. M.* and *J.* his wife respectively, in,

(*x*) See s. 77, 90.

to, or out of the same premises, and every part thereof, to the use of the said *N. O.*, his heirs and assigns for ever, in remainder after the decease of the said *H. B.*, and according to the custom of this manor (*y*).

(Second proclamation on the death of G. H.)

(13). At this court, the second proclamation is made for any person or persons, claiming title to the customary or copyhold hereditaments lying within and holden of this manor, whereof *G. H.* (whose death was presented at the last general court) died seized, to come into court and be admitted, but no one comes, therefore let a third proclamation be made at the next court (*z*).

(Presentment of Surrender by A. B. to C. D., a purchaser in fee; and his admittance and surrender to will).

(14. *a. & b*). At this court the homage present that on the — day of — in the year of our lord —, *A. B.*, of, &c., came before the said steward, and for carrying into effect a contract made and entered into by the said *A. B.* with *C. D.*, of, &c., for the sale to him of the copyhold hereditaments hereinafter described, and the customary fee simple and inheritance thereof, and in consideration of the sum of £ — of lawful money of the united kingdom of Great Britain and Ireland, current in England, unto the said *A. B.* in hand paid by the said *C. D.* at the time of making the same surrender, did out of court surrender into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, All, &c., with the appurtenances to the same premises belonging, or in anywise appertaining, (to which said hereditaments and premises the said *A. B.* was admitted at a court holden in and for this manor on the — day of —,) and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, benefit, power, claim and demand whatsoever of the said *A. B.* in, to, or out of the said hereditaments and premises, and every part thereof, to the use of the said *C. D.* his heirs and assigns for ever, according to the custom of this manor.

Now at this court comes the said *C. D.*, and prays to be admitted to the said hereditaments and premises so surrendered to his use by the said *A. B.* as aforesaid, *to which* said *C. D.*, the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said customary or copyhold hereditaments and premises, with their appurtenances, unto the said *C. D.* and his heirs, to be holden of the lord by copy of court-roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *C. D.* is admitted tenant thereof, and pays to the lord for a fine on such his admittance the sum of £ — —, and his fealty

(*y*) The admittance of *N. O.* would not be necessary.

(*z*) No copy would be necessary.

is respited. [Then will follow a surrender by *C. D.* to the uses of his will, see ante, p. 757.]

(*Presentment of the deaths of A. B. and his wife, and admittance of D. B. and E. B. their children, as tenants in common, under a former surrender.*)

(15. a). (16. a). At this court the homage present the deaths of *A. B.* and *C.* his wife, late respectively customary tenants of this manor, and that they had issue only one son and one daughter, namely, *D. B.* and *E. B.*, which facts are verified by the affidavit of *T. S.* intended to be inrolled at this court. And they also present that the said *D. B.* and *E. B.* are intitled to be admitted in equal undivided moieties, as tenants in common in fee simple, according to the custom of this manor, to the customary or copyhold hereditaments hereinafter described, under and by virtue of a surrender made thereof by the said *A. B.* and *C.* his wife, at a court holden for this manor on the — day of — (a).

(15. b). And at this court comes the said *D. B.*, and prays to be admitted to one undivided moiety, or equal half part, (the whole into two equal parts to be divided) of all and singular the hereditaments lying within and holden of this manor so surrendered by the said *A. B.* and *C.* his wife as aforesaid, to wit, All, &c., with the appurtenances thereunto belonging, to which said *D. B.*, the lord of this manor, by the said steward, grants seizin thereof by the rod, to have and to hold the said one undivided moiety or equal half part of the said customary or copyhold — — hereditaments and premises, with their appurtenances, unto the said *D. B.* and his heirs, to be holden of the lord by copy of court-roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents and other duties and services therefore due and of right accustomed, and so (saving the right of the lord) the said *D. B.* is admitted tenant thereof, and pays to the lord on such his admittance a fine [certain] of £— —, and his fealty is respited.

(16. b). And at this court comes the said *E. B.*, (by the said *D. B.* her attorney in this behalf appointed by the court), and prays to be admitted to one undivided moiety, or equal half part, (the whole into two equal parts to be divided) of all and singular the hereditaments lying within and holden of this manor, so surrendered by the said *A. B.* and *C.* his wife as aforesaid, to wit, to all, &c., [the description to be repeated] with the appurtenances thereunto belonging, to which said *E. B.* (in the person of her said attorney) the lord of this manor, by the said steward, grants seizin thereof by the rod, to have and to hold the said one undivided moiety or equal half part of the said customary or copyhold hereditaments and premises, with their appurtenances, unto the said *E. B.* and her heirs, to be holden, &c.; and so (saving the right of the lord) the said *E. B.* (in the

(a) The author has here supposed a surrender to have been made by *A. B.* and *C.* his wife of the estate of the wife, to the use of themselves for their respective lives,

and after the death of the survivor, to the use of all the children of the marriage, as tenants in common in fee simple.

person of her said attorney) is admitted tenant thereof, and pays to the lord on such her admittance a fine [*certain*] of £ — — —, and her fealty is respited.

(Presentment of the death of F. G., first proclamation, and admittance of H. G. and J. G. in coparcenary.)

(17). At this court the homage present the death of *F. G.*, late one of the customary tenants of this manor, and thereupon proclamation is made for any person or persons claiming title to the customary or copyhold hereditaments lying within and holden of this manor, whereof the said *F. G.* died seized, to come into court and be admitted.

Now at this court come *H. G.* spinster and *J. G.* spinster, the two only children and coheirresses, according to the custom of this manor, of the said *F. G.* deceased, and pray to be admitted in coparcenary to all and singular the hereditaments lying within and holden of this manor, whereof the said *F. G.* so died seized as aforesaid, to wit, to all, &c., with the appurtenances, and to which same hereditaments and premises the said *F. G.* was admitted tenant at a general court holden for this manor on the — day of —, to which said *H. G.* and *J. G.*, the lord of this manor, by the said steward, grants seizin thereof by the rod, to have and to hold the said customary or copyhold — — hereditaments and premises, with their appurtenances, unto the said *H. G.* and *J. G.* and their heirs, as tenants in coparcenary, to be holden of the lord by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents and other duties and services therefore due and of right accustomed, and so (saving the right of the lord) the said *H. G.* and *J. G.* are admitted tenants thereof in manner aforesaid, and pay to the lord on such their admittance a fine [*certain*] of £ — — —, and their fealties are respited.

(Conditional surrender from K. L. to M. N. and his admittance.)

(18. a). At this court comes *K. L.*, of, &c., one of the customary tenants of this manor, and in consideration of the sum of £ — — — to him in hand well and truly paid by *M. N.*, of, &c., in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, All, &c., with the appurtenances, (to which same premises the said *K. L.* was admitted at a court holden for this manor on the — day of —), and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, benefit, power, claim and demand whatsoever of the said *K. L.*, in, to, or out of the same premises, and every part thereof, to the use of the said *M. N.*, his heirs and assigns for ever, subject nevertheless to and upon this express condition, that if the said *K. L.*, his heirs, executors, administrators or assigns do and shall well and truly pay or cause to be paid to the said *M. N.*, his executors, administrators or assigns, the sum of £ — — — of lawful money, &c., on the — day of —, together with interest for the same

after the rate of five pounds per centum per annum, computed from the date of this surrender, clear of all taxes and deductions whatsoever, (being the same principal and interest monies as are mentioned to be secured by the covenant of the said *K. L.* with the said *M. N.*, contained in an indenture or deed of covenants bearing even date with this surrender), then this present surrender shall cease and be void, otherwise the same is to remain in full force and virtue.

(18. *b*). (*b*) And afterwards at this court comes the said *M. N.*, and prays to be admitted to the customary or copyhold hereditaments and premises, with their appurtenances, so surrendered to his use as aforesaid, to whom the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said — — hereditaments and premises, with their appurtenances, unto the said *M. N.* and his heirs, subject nevertheless to and upon the condition mentioned in the above surrender, to be holden of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *M. N.* is admitted tenant thereof, and pays to the lord on such his admittance a fine certain of £ — —, and his fealty is respited.

(Presentment of breach of conditional surrender from P. Q. to R. S., and admittance of R. S.)

(19.) At this court it is represented to the homage by *R. S.*, of &c., that default was made in payment of the principal sum of £ — —, secured to him the said *R. S.* by a conditional surrender from *P. Q.* of &c., one of the customary tenants of this manor, of certain customary or copyhold hereditaments lying within and holden of this manor, and which surrender was presented and inrolled at the last general court, and that the sum of £ — — is now due and owing for principal and interest upon and by virtue of the said surrender, and thereupon the homage present that the condition of the surrender so made to the said *R. S.* as aforesaid is broken, and the estate of the said *R. S.* thereby become absolute at law.

Now at this court the said *R. S.* prays to be admitted to the customary or copyhold hereditaments lying within and holden of this manor, so surrendered to his use as aforesaid, to wit, to all &c., with the appurtenances, to whom the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said customary or copyhold — — hereditaments and premises, with the appurtenances, unto the said *R. S.* and his heirs, to be holden of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents and other duties and services therefore

(*b*) It is sometimes the agreement of the parties that the mortgagee should be admitted tenant to the lord immediately after the surrender, but it is more usual

not to disturb the legal estate until the condition is broken, particularly in manors where the fine is arbitrary.

due and of right accustomed ; and so (saving the right of the lord and the right of any person or persons having an equity of redemption in the premises) the said *R. S.* is admitted tenant thereof, and pays to the lord on such his admittance a fine certain of £ — —, and his fealty is respited.

(Presentment of surrender by A. B. and wife to the trustees of their marriage settlement, and admittance of the trustees.)

(20). At this court the homage find and present that by an indenture bearing date &c., and made between *A. B.* of &c., of the first part, *C. D.* of &c., spinster, of the second part, and *E. F.* of &c., and *G. H.* of &c., of the third part: reciting that a marriage had been agreed upon and was intended shortly thereafter to be had and solemnized between the said *A. B.* and *C. D.*; and reciting that the said *A. B.* was seized of the freehold hereditaments thereafter described and intended to be thereby granted and released for an estate of inheritance in fee simple in possession, and that the said *C. D.* was seized of the copyhold hereditaments thereafter described and covenanted to be surrendered, for an estate of inheritance in fee-simple in possession, according to the custom of this manor, and after also reciting that upon the treaty for the said marriage it was proposed and agreed that the said freehold hereditaments should be conveyed and assured to for and upon the uses, trusts, intents and purposes thereafter limited, expressed, declared, and contained of and concerning the same ; and that the said copyhold hereditaments should be surrendered to the use of the said *E. F.* and *G. H.* and their heirs, upon and for the trusts, intents, and purposes, and in manner mentioned in the covenant or agreement in that behalf thereafter contained : It was witnessed that in consideration of the said then intended marriage, and for the nominal consideration therein expressed, the said *A. B.* did grant, bargain, sell, alien, and release unto the said *E. F.* and *G. H.* (in their actual possession then being by virtue of the bargain and sale for a year therein referred unto) and to their heirs and assigns, all and singular the freehold — — and hereditaments therein particularly described, with their appurtenances, to hold the same unto the said *E. F.* and *G. H.*, their heirs and assigns, to, for, and upon the uses, trusts, intents and purposes, and under and subject to the powers, provisos, declarations, and agreements in the said indenture of release and settlement, limited, expressed, declared, and contained of and concerning the same freehold hereditaments. And by the said indenture of release and settlement it was covenanted and agreed that the said *A. B.* and *C. D.* his then intended wife, should and would either before, or with all convenient speed after the solemnization of the said then intended marriage, duly surrender, according to the custom of this manor, the customary or copyhold hereditaments therein and hereinafter described, with their appurtenances, to the use of the said *E. F.* and *G. H.*, their heirs and assigns for ever, upon and for such trusts, intents and purposes, as would best and nearest correspond with the uses, trusts, and limitations thereinbefore expressed, declared, and contained, of and concerning the said freehold

hereditaments thereby conveyed and assured. And the homage also find and present, that a marriage was duly had and solemnized between the said *A. B.* and *C. D.* soon after the date and execution of the hereinbefore in part recited indenture of release and settlement. And they further find and present, that on the — day of — the said *A. B.* and *C.* his wife came before the said steward, and in pursuance of the said covenant or agreement in that behalf mentioned and contained in the said indenture of release and settlement, and the said *C. B.* being first examined by the said steward separately and apart from her said husband, and freely and voluntarily consenting thereunto, did out of court surrender into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, All &c., with the appurtenances to the same premises belonging, or in anywise appertaining, (and to which same hereditaments and premises the said *C. B.* (then *C. D.*) was admitted at a court held for this manor on the — day of —,) and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, benefit, power, claim, and demand whatsoever, of the said *A. B.* and *C.* his wife respectively, in, to, or out of the same hereditaments and premises, and every or any part thereof, to the use of the said *E. F.* and *G. H.*, their heirs and assigns for ever, according to the custom of this manor, but nevertheless upon and for the trusts, intents, and purposes expressed and declared, or referred unto, of and concerning the same customary or copyhold hereditaments and premises, in and by the said indenture of release and settlement.

Now at this court come the said *E. F.* and *G. H.*, and pray to be admitted to the said customary or copyhold — — hereditaments and premises so surrendered to their use by the said *A. B.* and *C.* his wife as aforesaid, to which said *E. F.* and *G. H.*, the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said — — hereditaments and premises, with their appurtenances, unto the said *E. F.* and *G. H.*, and their heirs, but nevertheless upon and for the trusts, intents, and purposes, expressed and declared, or referred unto, concerning the same customary or copyhold hereditaments and premises, in and by the said surrender so made thereof by the said *A. B.* and *C.* his wife as aforesaid, to be holden of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *E. F.* and *G. H.* are admitted tenants thereof in manner and form aforesaid, and pay to the lord for a fine on such their admittance the sum of £— —, and their fealties are respited.

THIRD COURT.

The manor of — } A general court baron of A. Z. lord, &c. [See
in the county of — } this form, ante, p. 755.]

(Third proclamation on the death of G. H., and precept to seize.)

(1). At this court the third proclamation is made for any person or persons claiming title to the customary or copyhold hereditaments lying within and holden of this manor, whereof *G. H.* (whose death was presented at a general court held the — day of —) died seized, to come into court and be admitted, and because no person claims to have title and to be admitted to the same hereditaments, a precept is awarded and issued to *W. Y.*, the bailiff of this manor, to seize the same customary or copyhold hereditaments into the hands of the lord of this manor, for his use and benefit, until some person or persons shall establish his, her, or their right to be admitted to the vacant tenancy (*c*).

[At the succeeding general court a minute must be entered of the return made by the bailiff, of his having seized the estate as commanded by the precept].

(Admittance of B. B., the infant heir of A. B., by attorney appointed by the steward, pursuant to 11 Geo. 4 & 1 Will. 4, c. 65.)

At this court the homage find and present, that at a general customary court baron held in and for this manor on the — day of —, *A. B.* was admitted tenant of the copyhold — and hereditaments herein-after described, with their appurtenances, to hold to him the said *A. B.* and his heirs, by copy of court roll, at the will of the lord, according to the custom of this manor. And they also find and present that the said *A. B.* hath since departed this life, leaving *B. B.* his — son and heir according to the custom of this manor. And the homage further find and present, that at a general customary court baron held in and for this manor on the — day of —, proclamation was made according to the custom of this manor for the heir or heirs of the said *A. B.*, or any other person or persons having right or title to the hereditaments and premises of which he died seized, to come into court and be admitted thereto, otherwise the same would be seized into the hands of the lord for the want of a tenant, and that no person coming to claim admittance the first default was recorded. And they also find and present that, at another general customary court baron held in and for this manor on the — day of —,

(*c*) But if by the custom a forfeiture accrues through neglect to take admission, this entry must be altered accordingly. Ante, pt. 1, p. 285, et seq. See Precept to seize quousque, and Precept to seize absolutely, post, "Forms of Precepts, Summonses, &c."

the second proclamation was made in like manner as aforesaid, and that no person then coming to claim admittance the second default was recorded. And they further find and present that, at another general customary court baron held in and for this manor on the — day of —, the third proclamation was made in like manner as aforesaid, and that no person then coming to claim admittance the third default was recorded.

Now at this court comes the said *B. B.* an infant, viz. of the age of — years or thereabouts, (the heir according to the custom of this manor of the said *A. B.* deceased,) by *C. D.* of &c., the attorney of the said *B. B.* to the said copyhold hereditaments hereinafter described appointed by the said steward, under and by virtue of the power in that behalf given to him in and by an act of parliament passed in the first year of the reign of his late majesty King William the Fourth, intituled, “An Act for consolidating and amending the Laws relating to Property belonging to Infants, Femes Covert, Idiots, Lunatics, and Persons of unsound Mind,” and prays to be admitted to all and singular the copyhold — — and hereditaments lying within and holden of this manor whereof the said *A. B.* died seized, to wit, All &c., with the appurtenances to the same premises belonging or appertaining, To which said *B. B.*, in the person of the said *C. D.* his attorney, the lord of this manor by the said steward grants seizin thereof by the rod: *To have and to hold* the said copyhold — — hereditaments and premises, with the appurtenances, unto the said *B. B.* and his heirs, to be holden of the lord by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed; And so (saving the right of the lord) the said *B. B.* (by the said *C. D.* his attorney,) is admitted tenant thereof;—And the sum of £— is imposed and set by the lord as a fine upon such admittance, and the fealty of the said *B. B.* is respited.

(Acknowledgment by M. N. of payment and satisfaction of monies secured by the conditional surrender of K. L.)

(2). At this court comes *M. N.* of &c., and acknowledges to have received of *K. L.* of &c., on the — day of — now last past (*d*), the sum of £— —, being the full amount of all principal and interest monies secured to him the said *M. N.*, by and under a conditional surrender of certain customary or copyhold hereditaments, lying within and holden of this manor, made by the said *K. L.* to the use of the said *M. N.* and his heirs, at the last general court, and under which surrender the said *M. N.* was admitted at the same court; and the said *M. N.* therefore prays that the said steward will enter his acknowledgment of satisfaction of the afore-

(*d*) This the author has supposed to be the day on which the money was made payable, so that the condition of the surrender was strictly performed, and in that case the

surrenderor might re-enter without new admittance. Ante, pt. 1, pp. 194, 295, 347. See a similar entry where the condition was forfeited, ante, p. 760.

said principal and interest monies on the court-rolls of this manor: *Whereupon* satisfaction is entered by the said steward accordingly.

(*Acknowledgment of satisfaction of monies secured by the conditional surrender of P. Q. to R. S. deceased; and Re-surrender from the heir of R. S. to P. Q., and his admittance.*)

(3. a). At this court comes *A. B.* of &c., sole acting executor of the last will and testament of *R. S.* of &c., and acknowledges to have received of and from *P. Q.* of &c., all principal and interest monies secured and made payable under and by virtue of a conditional surrender of certain customary or copyhold hereditaments, lying within and holden of this manor, made by the said *P. Q.* to the use of the said *R. S.* and his heirs, at a general court held for this manor on the — day of — [or made &c. and inrolled at the last general court as the case may be], and under which surrender the said *R. S.* was admitted at the same court; and the said *A. B.* therefore prays that the said steward will enter his acknowledgment of satisfaction of the aforesaid principal and interest monies on the court-rolls of this manor: *Whereupon* satisfaction is entered by the said steward accordingly (e).

(3. b). And afterwards at this court comes *C. S.* of &c., eldest son and heir, according to the custom of this manor, of the said *R. S.* deceased, and in consideration of the payment and satisfaction in manner aforesaid of the principal and interest monies secured by the said conditional surrender, in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor All &c., with the appurtenances, to which said hereditaments and premises the said *R. S.* was admitted at the last general court held for this manor, under and by virtue of the aforesaid conditional surrender; and the reversion &c., and all the estate &c., to the use of the said *P. Q.*, his heirs and assigns for ever, according to the custom of this manor.

(3. c). Now at this court comes the said *P. Q.* &c. [then *P. Q.* is to be re-admitted].

(*Presentment of the death of L. O., and first proclamation; presentment of his will, and admittance of T. C. and W. B. his devisees in trust.*)

(4. a). At this court the homage present the death of *L. O.*, late one of the customary tenants of this manor, and thereupon proclamation is made for any person or persons claiming title to the customary or copyhold here-

(e) The money not being paid in this case at the time it became due, a re-surrender from the heir of the mortgagee would be necessary, which follows, with the re-admittance of the mortgagor. Ante,

pt. 1, pp. 194, 342.

For the mode of entering satisfaction upon the court-rolls, under this and the preceding acknowledgment, see ante, p. 760.

ditaments, lying within and holden of this manor, whereof the said *L. O.* died seized, to come into court and be admitted.

(4. *b*). And afterwards at this court the homage present that the said *L. O.*, in and by his last will and testament in writing, bearing date the — day of — (the probate whereof is produced in court), gave and devised all his customary or copyhold hereditaments, situate &c., within this manor, unto his friends *T. C.* and *W. B.* and their heirs, upon and for such trusts, intents and purposes, as in the same will are expressed (*f*).

(4. *c*). Now at this court come the said *T. C.* and *W. B.*, and pray to be admitted to the customary or copyhold hereditaments within this manor so devised to them as aforesaid, upon and for the trusts, intents and purposes expressed concerning the same by the said will of the said *L. O.* deceased, to wit, to All &c., with their appurtenances, and to which same hereditaments and premises the said *L. O.* was admitted at a special court holden in and for this manor on the — day of — : *To which* said *T. C.* and *W. B.*, the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* all and singular the said — — hereditaments and premises, with their appurtenances, unto the said *T. C.* and *W. B.*, and their heirs, upon and for the trusts, intents and purposes expressed and declared concerning the same in and by the said will of the said *L. O.* deceased, to be holden of the lord by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed, and so (saving the right of the lord) the said *T. C.* and *W. B.* are admitted tenants thereof in manner and form aforesaid, and pay to the lord for a fine on such their admittance the sum of £— —, of the lord's favour (*g*), and their fealties are respited.

(Presentment of the death of M. R., and first proclamation; presentment of her will, and admittance of A. B. the devisee for life.)

(5. *a*). At this court the homage present the death of *M. R.*, widow, late one of the customary tenants of this manor, and thereupon proclamation is made for any person or persons claiming title to the customary or copyhold hereditaments lying within and holden of this manor, whereof the said *M. R.* died seized, to come into court and be admitted.

(*f*) When the trusts are very long, and of a contingent nature, it may be desirable to admit the trustees, with a general reference to the will, leaving the particular trusts to be presented and recorded, together with the eventual circumstances, calling for a surrender on the part of the trustees; ante, pt. 1. p. 405, et seq.

(*g*) The author has here supposed the fine to be arbitrary.—To prevent its being

considered a fine certain, the amount should be varied from that which was paid by *L. O.* on his admittance; ante, pt. 1, pp. 340, 357, et seq. And the admittance being of two persons as joint-tenants, the lord would be entitled to a larger fine than he could have claimed if there had been only one trustee; ante, pt. 1, p. 320, et seq.

(5. *b*). And afterwards at this court the homage present that the said *M. R.*, in and by her last will and testament in writing, bearing date &c., (the probate whereof is produced in court,) gave and devised all &c., lying within and holden of this manor, unto *A. B.* and his assigns for the term of his life, with such remainders over as in the same will are expressed.

(5. *c*). Now at this court comes the said *A. B.*, and prays to be admitted to the customary or copyhold hereditaments lying within and holden of this manor, so devised to him for his life as aforesaid, and with such remainders over as in the said will of the said *M. R.* deceased are mentioned, to wit, to All &c., with the appurtenances, and to which same premises the said *M. R.* was admitted at the last general court holden for this manor; to which said *A. B.*, the lord of this manor, by the said steward grants seizin thereof by the rod, *to have and to hold* the said — — hereditaments and premises, with their appurtenances, unto the said *A. B.* and his assigns, for the term of his life, and with such remainders over as in the said will of the said *M. R.* are expressed, and according to the purport and true meaning of the same will, to be holden of the lord by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed, and so (saving the right of the lord) the said *A. B.* is admitted tenant thereof in manner aforesaid, and pays to the lord for a fine on such his admittance the sum of £ — — — (*h*) of the lord's favour, and his fealty is respited.

(Admittance of B. B., an infant, as heir of A. B., and appointment of guardian.)

(6. *a*). At this court, after the first proclamation having been made at the last general court held for this manor, for any person or persons claiming title to the customary or copyhold hereditaments lying within and holden of this manor, whereof *A. B.* then lately died seized, to come into court and be admitted, comes *B. B.*, an infant of the age of — years, or thereabouts, eldest son and heir, according to the custom of this manor, of the said *A. B.* deceased, and prays to be admitted to the said hereditaments, to wit, to All &c., with the appurtenances, to whom &c. : [admittance to follow in the ordinary form, and then an appointment of guardian, (if such be the custom of the manor) (*i*), thus:]

(6. *b*). And because of the infancy of the said *B. B.*, the lord of this manor, by the said steward, doth grant and commit the wardship of the customary or copyhold — — hereditaments and premises, to which the said *B. B.* hath been so admitted as aforesaid, unto *C. D.*, his next of kin, to whom the same hereditaments and premises cannot descend, until the said *B. B.* shall attain his full age, according to the custom of this manor, he the said *C. D.* answering such services as are or ought to be performed by him, as such guardian as aforesaid, according to the cus-

(*h*) As the admittance of a tenant for ante, pt. 1, pp. 294, 342.

life is the admittance of all in remainder, (i) Ante, pt. 1, pp. 53, 397.
the fine is to be assessed accordingly;

tom of this manor, and rendering a full and just account when thereunto required.

(Revocation of guardianship assigned by the lord.)

(7). Because the aforesaid *C. D.* did not perform the conditions on which the said custody was granted as aforesaid, but contrary to the trust reposed in him, the said *B. B.* (the infant) and his customary lands ill-treated, and abused his power in that behalf committed; wherefore the custody or wardship of the said infant, and of his customary or copyhold tenements, heretofore committed to the said *C. D.* as aforesaid is accordingly by the lord of this manor revoked, and to all intents and purposes utterly and absolutely annulled (*k*).

(Admittance of E. D., widow, to the tenements assigned to her for freebench.)

(8). At this court, after a second proclamation made at the last general court held for this manor, for any person or persons claiming title to the customary or copyhold hereditaments lying within and holden of this manor whereof *C. D.* then lately died seized, to come into court and be admitted, comes *E. D.*, the widow of the said *C. D.*, and prays to be admitted for the term of her life, according to the custom of this manor, to the hereditaments hereinafter described, *being such part of the customary or copyhold hereditaments holden of this manor, and of which the said C. D. so died seized, as hath been set out for the customary dower of her the said E. D. by F. D., the eldest son and heir, according to the custom of this manor, of the said C. D. deceased (l), to wit, to All &c., with the appurtenances, and to which same premises (together with other hereditaments) the said C. D. was admitted at a general court held for this manor on the — day of —, to which the said E. D., the lord of this manor, by the said steward, grants seizin thereof by the rod, to have and to hold the said — — hereditaments and premises, with the appurtenances, unto the said E. D. and her assigns for her life, to be holden of the lord by copy of court-roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed, and so (saving the right of the lord) the said E. D. is admitted tenant thereof in manner and form aforesaid, and pays to the lord for a fine on such her admittance the sum of £ — —, of the lord's favour, and her fealty is respited.*

[This form, with little variation, will serve for the admittance of the widow to a moiety of customary gavelkind land, to be held by agreement in common with the heir; see Rob. Gav. 227, et seq., 3rd ed.; ante, pt. 1, pp. 77, 78; and also for the admittance of the husband tenant by the curtesy of a portion only of the wife's land; see references in n. (t) infra.]

(*k*) 2 Watk. on Cop. 108.

(*l*) Entry and admittance seem to be necessary when the dower is, as here supposed, of a portion of the land, and not of

a portion of the interest in the land; ante, pt. 1, pp. 77, 297 et seq., 349. And see particularly *Chapman v. Sharpe*, 2 Sho. 184.

(Admittance of F. D. as heir of C. D., subject to free-bench.)

(9). At this court, after a second proclamation made at the last general court held for this manor, for any person or persons claiming title to the customary or copyhold hereditaments lying within and holden of this manor, whereof *C. D.* then lately died seized, to come into court and be admitted, comes *F. D.*, the eldest son and heir, according to the custom of this manor, of the said *C. D.*, and prays to be admitted to the same hereditaments as tenant in fee simple, according to the custom of this manor, subject to the customary dower or free-bench of *E. D.*, the widow of the said *C. D.*, and to which she hath been admitted at this same court, to wit, to All &c., with the appurtenances, to which said *F. D.*, the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said customary or copyhold — — hereditaments and premises, with their appurtenances, unto the said *F. D.* and his heirs, (subject nevertheless to such customary widow's estate, dower or free-bench as aforesaid,) to be holden of the lord by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, &c., and so (saving the right of the lord) the said *F. D.* is admitted tenant thereof in manner and form aforesaid, and pays to the lord for a fine on such his admittance the sum of £ — —, of the lord's favour, and his fealty is respited.

(Surrender and release of free-bench by J. H., widow of G. H., to L. H., the customary heir.)

(10). At this court comes *J. H.*, widow of *G. H.*, late one of the customary tenants of this manor, and in consideration of the natural love and affection which she hath and beareth for *L. H.*, eldest son of the said *G. H.* deceased by her the said *J. H.*, in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, and doth also remise, release and for ever quit claim the customary dower, widow's estate or free-bench, right, title and interest whatsoever of her the said *J. H.* in, to, or out of All &c., to which same premises the said *L. H.* was admitted as the customary heir of the said *G. H.*, subject to the said dower, widow's estate or free-bench of her the said *J. H.* (*m*), at a general court held for this manor on the — day of —, to the use of the said *L. H.* and his heirs, according to the custom of this manor, to the end and intent that the said *L. H.* and his heirs may henceforth have, hold, possess and enjoy all and singular the hereditaments and premises hereinbefore described, freed and discharged of and from the customary dower, widow's estate or free-bench of her the said *J. H.* in, to, or out of the same premises, or any part

(*m*) The wife is here supposed to be unnecessary. See the references in the dowable of a portion only of the interest last note.
in the land, and her admittance therefore

thereof, and of and from all actions, suits, claims and demands in respect thereof, or in anywise relating thereunto.

[*This form will serve, with very little variation, for a release by the husband of his estate by the customary curtesy, when admittance is unnecessary.*]

(*Surrender and release of equity of redemption by A. B. to C. D., and his admittance.*)

(11 a). At this court comes *A. B.*, one of the customary tenants of this manor, and in consideration of the sum of £ — —, to him in hand well and truly paid by *C. D.* of &c., in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, and doth also remise and release All &c., with the appurtenances, which same hereditaments and premises were, at a general court holden for this manor on the — day of —, duly surrendered by the said *A. B.* to the use of the said *C. D.* and his heirs, subject to a condition for avoiding the said surrender on payment to the said *C. D.*, his executors, administrators or assigns, of the sum of £ — —, and lawful interest for the same, at the time therein mentioned, and since passed, and by virtue of which same conditional surrender the sum of £ — — is now due and owing to the said *C. D.* from the said *A. B.*, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, equity of redemption, benefit, property, claim and demand whatsoever of the said *A. B.* in, to, or out of the said premises, and every part thereof, to the use of the said *C. D.*, his heirs and assigns for ever, according to the custom of this manor.

(11. b). Now at this court comes the said *C. D.*, and prays to be admitted to the said customary or copyhold hereditaments and premises so surrendered and released to his use at this court as aforesaid, to whom &c. [*admittance of C. D. to follow in the usual form*] (n).

(*Surrender and release of right from G. G. and F. his wife, to H. H. the tenant.*)

(12). At this court come *G. G.* of &c. and *F. G.* his wife, she the said *F. G.* claiming to be intitled to the fee simple and inheritance, according to the custom of this manor, of and in the hereditaments herein-after described, and in consideration of the sum of £ — —, of lawful money &c., to them in hand well and truly paid by *H. H.*, the present tenant of the same hereditaments, and the said *F. G.* being first examined by the said steward separately and apart from her said husband, and freely and voluntarily consenting thereto (o), in open court surrender into the hands of the lord of this manor, by the hands and acceptance of the said

(n) And as *C. D.* was not admitted on the conditional surrender, a fine would of course be payable upon this admittance.

Ante, pt. 1, pp. 141, 315, 347.

(o) Ante, pt. 1, p. 195.

steward, by the rod, according to the custom of this manor, and also do respectively remise and release All &c., with the appurtenances, to which same premises the said *H. H.* was admitted at a court holden for this manor on the — day of —; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, trust, benefit, property, claim and demand whatsoever, of the said *G. G.* and *F. G.* his wife, or either of them, in, to, or out of the same premises, and every part thereof, to the use of the said *H. H.*, his heirs and assigns for ever, according to the custom of this manor (*p*).

(Presentment of bargain and sale of the copyhold lands of a bankrupt by one of the commissioners to a purchaser; and of a surrender by the bankrupt under the authority contained in that deed; and admittance of the purchaser; and his surrender to will) (q).

At this court the homage find and present that by an indenture of bargain and sale bearing date the — day of —, and made between *A. B.* esquire, (one of the commissioners named in the fiat of bankruptcy thereafter mentioned to have been then lately issued against *C. D.* of &c.,) of the first part; *E. F.* of &c., and *G. H.* of &c., (assignees chosen as thereafter mentioned of the estate and effects of the said *C. D.*,) of the second part; the said *C. D.* of the third part; and *I. K.* of &c., of the fourth part; reciting that at a customary court baron holden for this manor on the — day of —, the said *C. D.* was admitted on the surrender of *L. M.* of &c., (or as the customary heir of &c., as the case may be,) to all and singular the copyhold hereditaments thereafter described, with their appurtenances, to hold to him the said *C. D.* and his heirs, according to the custom of this manor; and reciting that a fiat of bankruptcy was on the — day of — issued against the said *C. D.*, directed to the said *A. B.* and other the commissioners of the court of bankruptcy, established by an act of parliament passed in the second year of the reign of his late Majesty King William the Fourth, intituled "An act to establish a court in bankruptcy," under which the said *C. D.* was adjudged to have become bankrupt; and also reciting that the said *E. F.* and *G. H.* were some time since duly chosen and appointed by the creditors of the said *C. D.* to be the assignees of his estate and effects; and after further reciting that the said *A. B.*, pursuant to the powers created by and under an act of parliament passed in the sixth year of the reign of his Majesty King George the Fourth, and the act of parliament thereinbefore referred unto, or one of them, caused the said copyhold hereditaments thereafter described, and the customary fee simple and inheritance thereof in possession, to be put up to sale by public auction, at —, on the — day of —; and that at such sale the said *I. K.* attended and was declared to be the highest bidder for and purchaser of the same hereditaments at and for the

(*p*) An admittance would not be necessary in this case. Ante, pt. 1, pp. 194 et seq., 313, 352.

(*q*) See precedent of bargain and sale, post.

price or sum of £ — — — : It was witnessed that for carrying the said sale and purchase into effect, and in consideration of the said sum of £ — — —, of lawful money of the united kingdom of Great Britain and Ireland, current in England, unto the said *E. F.* and *G. H.*, assignees as aforesaid, with the privity and approbation of the said *A. B.* and also of the said *C. D.*, (testified as therein mentioned,) in hand paid by the said *I. K.* at the time of the execution thereof, and for the nominal consideration therein expressed, the said *A. B.*, in further pursuance and execution of the powers vested in him as aforesaid, did, as far as he lawfully could or might, bargain and sell, limit and appoint, convey and assure, and the said *E. F.* and *G. H.*, and also the said *C. D.*, did respectively bargain and sell, remise, release and confirm unto the said *I. K.*, his heirs and assigns, All &c., together with all ways, &c. and appurtenances whatsoever to the said hereditaments and premises belonging or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; to hold the said customary or copyhold — — hereditaments and premises mentioned or intended to be thereby bargained and sold, limited and appointed, or otherwise assured, with the appurtenances thereof, unto and to the use of the said *I. K.*, his heirs and assigns for ever, but nevertheless according to the custom of this manor, and subject to the rents, customs, suits and services payable and to be performed in respect of the same premises, to the lord or lady, lords or ladies of this manor for the time being: and the said *A. B.*, in further pursuance and execution of the powers given to him by the said fiat and the said statutes respectively, or one of them, did thereby entitle and authorise the said *C. D.*, on behalf of him the said *A. B.*, to surrender all and singular the customary or copyhold — — hereditaments and premises thereinbefore described, with their appurtenances, according to the custom of this manor, so and in such manner and to the intent and purpose that the said *I. K.* might be admitted thereto as such purchaser thereof as aforesaid, he the said *I. K.* previously agreeing and compounding with the lord or lady, lords or ladies of this manor, for the fines, dues and other services payable and performable by the custom thereof. And the homage also find and present, that on the — day of — the said *C. D.* came before the said steward, and pursuant to and in compliance with the said authority and direction in that behalf mentioned and contained in the said indenture of bargain and sale, and for the purpose of dispossessing himself of any customary right, title or interest then vested in him, of, in, or to the hereditaments thereafter described, and for the considerations expressed in the same indenture of bargain and sale, did out of court surrender into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, all and singular the said customary or copyhold — — hereditaments and premises comprised in the said indenture of bargain and sale, and hereinbefore described, with their appurtenances; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, benefit, power, claim and demand whatsoever of

the said *C. D.*, in, to, or out of the same hereditaments and premises, and every part thereof, to the use of the said *I. K.*, his heirs and assigns for ever, according to the custom of this manor.

Now at this court comes the said *I. K.* and prays to be admitted to the said customary or copyhold hereditaments and premises so surrendered to his use by the said *C. D.* as aforesaid, (and to which same premises the said *C. D.* was admitted at a court holden for this manor on the — day of —,) to which said *I. K.*, the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said — — hereditaments and premises, with their appurtenances, unto the said *I. K.* and his heirs, to be holden of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents and other duties and services therefore due and of right accustomed, and so (saving the right of the lord) the said *I. K.* is admitted tenant thereof, and pays to the lord for a fine on such his admittance the sum of £— —, and his fealty is respited. [Then will follow a surrender by *I. K.* to the uses of his will, see ante, p. 757.]

(Presentment of surrender of the copyhold lands of an insolvent debtor, by the assignee, appointed by the court, to a purchaser; and his admittance and surrender to will) (r).

At this court the homage find and present that at a court holden for this manor on the — day of —, *A. B.* of &c., was admitted upon the surrender of *L. M.* of &c., [or, “as the customary heir of &c.,” *as the case may be*,] to the customary or copyhold hereditaments hereinafter described, to hold to him the said *A. B.* and his heirs for ever, according to the custom of this manor. And the homage also find and present that the said *A. B.*, on the — day of —, presented his petition to the commissioners of the insolvent debtors’ court, whereupon an order was made by the said court pursuant to the direction of the act of parliament passed in the second year of the reign of her said present Majesty Queen Victoria, intituled “An Act for abolishing arrest on mesne process” (*s*), *vesting* the estate of the said *A. B.* in the provisional assignee of the said court. And the homage also find and present that *E. F.* of &c., was by an order of the same court, dated the — day of —, appointed general assignee of the estate of the said insolvent. And the homage further find and present that a certified copy of the said order *vesting* the estate of the said *A. B.* in the provisional assignee of the insolvent debtors’ court, and of the said appointment of the said *E. F.* as the general assignee of the same estate, have been entered on the court rolls of this manor, pursuant to the provision and direction in that behalf mentioned and contained in the aforesaid act of parliament. And they also find and present that the said *E. F.*, in pursuance

(*r*) For the purpose of framing this precedent in conformity with the provisions of the Act of 1 & 2 Vict. c. 110, the author has presumed the court to be

held not as in the other precedents in the reign of King William the Fourth, but in the reign of Queen Victoria.

(*s*) Ante, pt. 1, pp. 308, 351, n. (*s*).

of and obedience to an order of the said court for relief of insolvent debtors, caused the said customary or copyhold hereditaments to be put up to sale at &c., on the — day of — last, and that at such such sale *G. H.* of &c., was declared to be the highest bidder for and purchaser of the same hereditaments and the customary fee simple and inheritance thereof at or for the price or sum of £— —. And the homage further find and present that on the — day of — the said *E. F.* came before the said steward, and by virtue and in execution of the trust or power reposed in him in that behalf by and under the said act of parliament passed in the second year of the reign of her said present Majesty, and in further pursuance of and obedience to the said lastmentioned order of the said court for relief of insolvent debtors, and in consideration of the sum of £—, of lawful money &c., to him the said *E. F.*, as such assignee as aforesaid, in hand well and truly paid by the said *G. H.* at the time of making the same surrender, did out of court surrender into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, All &c., with the appurtenances to the same premises belonging or appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, benefit, power, claim and demand whatsoever of the said *E. F.*, in, to, or out of the same hereditaments and premises, and every part thereof, to the use of the said *G. H.*, his heirs and assigns for ever, according to the custom of this manor.

Now at this court comes the said *G. H.*, and prays to be admitted to the said customary or copyhold — — hereditaments and premises, with their appurtenances, so surrendered to his use as aforesaid, to which said *G. H.*, the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said — — hereditaments and premises, with their appurtenances, unto the said *G. H.* and his heirs, to be holden of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *G. H.* is admitted tenant thereof, and pays to the lord for a fine on such his admittance the sum of £— —, and his fealty is respited. [Then will follow a surrender by *G. H.* to the uses of his will (*t*).]

(Voluntary grant in fee of part of the waste lands as copyhold, by virtue of a special custom) (u).

At this court comes *A. B.* of &c., and prays of the lord a grant to him the said *A. B.* and his heirs, according to the custom of this manor, of the

(*t*) Ante, p. 757.

(*u*) A special custom for the lord, with the consent of the homage, to make grants of the common or waste lands, as copyhold, is essential as regards both the lord's freehold title and the rights of any com-

moners; ante, pt. 1, pp. 23, 518; and although the Commutation and Enfranchisement Act (4 & 5 Vict. c. 35) sanctions such a custom, it expressly negatives any power in the lord under that Act to grant common or waste lands without the con-

piece or parcel of land hereinafter described, part of the common or waste land of the same manor, at and under the yearly rent of —, fine certain of — [or “fine arbitrary”] on admission (*x*), suit of court and other the duties and services payable and to be performed in respect of the said piece or parcel of land by the established custom of this manor.

Now at this court the lord of this manor, by the said steward, with the consent of the homage of this court, testified by their verdict signed by them severally at the foot of the minutes thereof, doth grant and deliver seizin by the rod, according to the custom of this manor, unto the said *A. B.*, of All &c., with the appurtenances to the same premises belonging or appertaining, *to have and to hold* the said piece or parcel of land, hereditaments and premises, with their appurtenances, unto the said *A. B.* and his heirs for ever, to be holden of the lord by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, the annual rent of —, fine certain of — [or “fine arbitrary”] on admission, and other the duties and services therefore due and of right accustomed (*y*), and so (saving the rights of the lord) the said *A. B.* is admitted tenant of the same premises, and thereupon pays to the lord for a fine the sum of £ — —, according to the custom of this manor, and his fealty is respited.

(Inrolment of a grant of lands escheated or forfeited) (z).

The manor of — } Be it remembered that on the — day of —,
in the county of — } in the — year of &c., and in the year of our
Lord —, *A. Z.*, lord of this manor, of his special grace and favour, did out of court give and grant seizin by the rod, according to the custom of this manor, unto *A. B.* of &c., of All &c., with their appurtenances, which same hereditaments and premises [*here state whether the copyhold interest vested in the lord by escheat or forfeiture, and by what means*], to hold the said — — hereditaments and premises, with the appurtenances, unto the said *A. B.* and his heirs, to be holden of the lord by copy of court-roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties

sent of the homage, assembled at a customary court duly summoned and holden according to ancient usage, and renders the presence of a sufficient number of copyholders to constitute a homage indispensable to the validity of the court, (s. 91).

(*x*) The accustomed rent and fines should be reserved by the grant, and if any commutation thereof in reference to the Act of 4 & 5 Vict. c. 35, is agreed upon, it should be effected subsequently under the powers of that Act.

(*y*) If the lord and the grantee have entered into any special convention as to

the erection of cottages or other buildings on the above piece of land, or any restriction as to building thereon, or otherwise, it should be made the subject of a separate agreement, but it might be introduced in this part of the grant by way of condition; — the latter mode, indeed, will be preferable, should the lord be seized of the manor for life or other limited interest only.

(*z*) Grants of this nature should be inrolled according to their dates, immediately previous to the entry of the then succeeding court.

and services therefore due and of right accustomed, and so (saving the right of the lord) the said *A. B.* was admitted tenant thereof, and paid to the lord for a fine on such his admittance the sum of £— —, of the lord's favour, and his fealty was respited.

Examined by me,
J. S., steward.

(Inrolment of a license to demise.)

The manor of — } Be it remembered that on the — day of —,
in the county of — } in the year of our Lord —, the lord of this manor
did out of court give and grant to *A. B.*, one of the customary tenants of
this manor, full license, power and authority to demise and lease to any
person or persons willing to take the same, as lessee to the said *A. B.*, but
not by way of mortgage, and to the executors, administrators and assigns
of such person or persons, All &c., with the appurtenances, to which same
premises the said *A. B.* was admitted at a general court held for this manor
on the — day of —, to hold for any term or number of years not ex-
ceeding — years, computed from the — day of —, saving always to
the lord of this manor, and to all and every the lord and lady, lords and
ladies of this manor for the time being, all and all manner of fines, heriots,
rents, customs and services therefore due and of right accustomed; and for
the said license the said *A. B.* paid for a fine the sum of £— —, ac-
cording to the custom of this manor. [When the custom has not fixed the
fine, the words in *italics* to be omitted] (*a*).

Examined by me,
J. S., steward.

(Inrolment of Deed of Enfranchisement, A. Z. to C. D.)

[Vide the precedent of deed, post, "Copyhold Assurances."]

*(Inrolment of Deed of Enfranchisement under a power in the marriage
settlement of, &c.)*

[Vide the precedent of deed, post, "Copyhold Assurances."]

*(Entry of certified Copy of the Order of the Insolvent Debtors' Court,
VESTING the Estate of A. B. in the Provisional Assignee, and of the
Appointment of the General Assignee, pursuant to the provisions of 1 &
2 Vict. c. 110) (b).*

[The copies of the order and appointment to follow here.]

(*a*) Any other licenses, (operating as a dispensation of acts of forfeiture,) granted subsequently to the then last general court, should be inrolled in like manner.
(*b*) Ante, 754, 800; pt. 1, p. 308.

(Entry of Deed of Consent by A. B., the Protector of a Settlement) (c).

[Vide the precedent of deed, post, "Copyhold Assurances."]

(Entry of Deed of Disposition by A. B. to bar an equitable Estate Tail) (d).

[Vide the precedent of deed, post, "Copyhold Assurances."]

The acknowledgment by the lord, or the steward or his deputy, of the production of a deed of consent executed by a PROTECTOR, and of the entry thereof on the court rolls, required by the 51st section of 3 & 4 Will. 4, c. 74, to be indorsed on the deed, may be in the following form:—

Manor of ——— } I do hereby testify that this deed was produced
in the county of ——— } to me the ——— day of ———, 18——, and that the
same has been entered on the court rolls of the said manor, pursuant to
the directions of the Act of 3 & 4 Will. 4, c. 74, abolishing fines and re-
coveries.

J. S., steward.

The memorandum, required by the 53rd section of the above Act to be indorsed by the lord, or the steward or his deputy, on a deed of disposition executed by an EQUITABLE tenant in tail of copyholds, certifying the entry thereof on the court rolls, may be as follows:—

Manor of ——— } I do hereby testify that this deed was left with
in the county of ——— } me on the ——— day of ———, for the purpose of
being entered on the court-rolls of the said manor, and that the same has
been duly entered accordingly, pursuant to the directions of the Act of 3 &
4 Will. 4, c. 74, abolishing fines and recoveries.

J. S., steward.

(Further Precedents of Court Rolls.)

[*Note.* In the succeeding court the copyholds are supposed to be held for lives, subject to a heriot on death.]

(c) 3 & 4 Will. 4, c. 74, ss. 51, 54;
ante, pt. 1, p. 57.

(d) 3 & 4 Will. 4, c. 74, s. 53; ante,
pt. 1, p. 61.

FOURTH COURT (e).

The manor of ——— } A general Court Baron of, &c. [For this form
in the county of ——— } see ante, p. 755.]

(Voluntary grant to A. B., and to C. D. and E. F., his nominees, for their lives successively) (f).

(1). At this court comes *A. B.* of &c., and takes of the lord of this manor, by delivery of seisin by the said steward by the rod, according to the custom of this manor, All &c., [here state whether the estate fell into the hands of the lord by determination of a former grant, or escheat, or forfeiture,] *to have and to hold* the said ——— hereditaments and premises, with the appurtenances, unto the said *A. B.*, now aged ——— years or thereabouts; *C. D.* of &c., now aged ——— years or thereabouts; and *E. F.* of &c., now aged ——— years or thereabouts, for the term of their lives, and the life of the longest liver of them *successively*, to be holden of the lord by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient annual rent or rents and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *A. B.* is admitted tenant thereof, and pays to the lord for a fine, for the estate and interest so granted as aforesaid, the sum of £— — —, [if the fine be certain, say “and he pays to the lord for the estate and interest so granted as aforesaid a fine certain of £— — —” (g),] and his fealty is respited.

(Presentment of the death of C. D., and surrender by A. B. and E. F., (the surviving lives,) in order to a renewal, and re-grant accordingly) (h).

(2. a). At this court the homage present that *C. D.*, the second life named in a certain voluntary grant made of the tenements hereinafter described, at a court holden for this manor on the ——— day of ———, departed this life since the last general court.

(c) The numerous cases which have been submitted to the author on the effect of grants of copyholds for lives, and the very unsatisfactory nature of the forms given in the ancient books on court keeping, with a conviction that many of them, even with an established usage, could not be supported as *legal* grants consistently with fixed principles of law, (ante, pt. 1, pp. 50, 51, 351,) have induced him to make some little alteration in the precedents of this court.

(f) The author has supposed *A. B.* to be the sole purchaser for three lives of

land which had fallen into hand either by the determination of a former copy, or by escheat or forfeiture; ante, pt. 1, p. 409, et seq.

(g) The steward is here reminded that the certainty of the fine is essential to a tenant right of renewal of copyholds for lives; ante, pt. 1, p. 357, et seq.

(h) The author has supposed this to be a surrender of the last-mentioned copy, upon the death of *C. D.*, for the purpose of adding the life of *G. H.* to the lives of *A. B.* and *E. F.*

And afterwards at this court come *A. B.*, the first life named in the afore-said voluntary grant, and *E. F.*, the third life named in the same grant, and in open court surrender into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, All &c., with the appurtenances thereof, and all the estate and interest of the said *A. B.* and *E. F.* respectively therein or thereto, *to the intent* that the lord may re-grant the same premises to the said *A. B.* and *E. F.*, and to *G. H.* of &c., now aged — years or thereabouts, for the term of their lives, and the life of the longest liver of them *successively*, according to the custom of this manor.

(2. *b*). To which said *A. B.*, *E. F.* and *G. H.*, the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said — — hereditaments and premises, with the appurtenances, unto the said *A. B.*, *E. F.* and *G. H.*, for the term of their lives, and the life of the longest liver of them *successively*, to be holden of the lord by copy of court-roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed: and so (saving the right of the lord) the said *A. B.* is admitted tenant thereof, and pays to the lord for a fine, for the further estate and interest so granted, the sum of £— — — (*i*), and his fealty is respited.

(Presentment of the death of A. B. (the first life), and proclamation for C. D. (the second life) to take admittance) (k).

(3). At this court the homage present that *A. B.*, late one of the customary tenants of this manor of one messuage and — acres of land, and common of pasture for —, died since the last general court, whereupon there accrued due to the lord of this manor a heriot of the best beast of the said *A. B.* at the time of his death; and that *C. D.* of &c., is next in reversion for the term of his life, according to the custom of this manor: and at this court proclamation is made for the said *C. D.* to come in and be admitted to the said tenements, but he does not appear, therefore his default is recorded (*l*).

(Admittance of C. D. (the second life); surrender by him and E. F. (the third life); and re-grant to G. H., a purchaser, his executors, &c.) (m).

(4. *a*). At this court comes *C. D.*, the life next in succession after the life of *A. B.*, whose death was presented at the last general court, and prays to be admitted under and by virtue of a grant made at a court holden for this manor on the — day of —, to the said *A. B.*, and *C. D.*, and

(*i*) In this precedent, and those which follow, the author has assumed that there is not a tenant right of renewal.

(*k*) The author has supposed that *A. B.*, *C. D.* and *E. F.* were equal purchasers,

and paid a full fine on the original grant.

(*l*) No copy of the roll would be necessary.

(*m*) Supra, n. (*k*).

E. F. of &c., for the term of their lives and the life of the longest liver of them *successively*, to *All* &c., with the appurtenances: to which said *C. D.*, the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said — — hereditaments and premises, with the appurtenances, unto the said *C. D.*, according to the form and effect of the aforesaid grant, to be holden of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient annual rent or rents and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *C. D.* is admitted tenant thereof in manner and form aforesaid, and his fealty is respited.

(4. *b*). And afterwards, at this court, come the said *C. D.* and *E. F.*, and in consideration of the sum of £— —, of lawful money &c., to them in hand well and truly paid by *G. H.* of &c., in open court surrender into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, All and singular the said customary or copyhold — — hereditaments and premises, to which the said *C. D.* hath been so admitted at this court as aforesaid; and all the estate and interest of the said *C. D.* and *E. F.* respectively therein or thereto, *to the intent* that the lord may re-grant the same premises to the said *G. H.*, his executors and administrators (*n*), for the term of the lives of the said *C. D.* and *E. F.*, and the life of the longest liver of them, according to the custom of this manor; to which said *G. H.*, the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said hereditaments and premises, with the appurtenances, unto the said *G. H.*, his executors and administrators, for the term of the lives of the said *C. D.* and *E. F.*, and the life of the longest liver of them, to be holden of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient annual rent or rents and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *G. H.* is admitted tenant thereof, in manner and form aforesaid, and his fealty is respited.

(Surrender by the said G. H., and re-grant to him and his nominees for their lives successively) (o).

(5. *a*). At this court comes *G. H.* of &c., who holds the customary or copyhold hereditaments hereinafter described for the term of the lives of *C. D.* and *E. F.*, and the life of the longest liver of them, and in open court sur-

(*n*) It would be more regular to extend the grant to the executors and administrators of the purchaser, as special occupants, (*ante*, pt. 1, pp. 1, pp. 50, 51, 52, 351;) although the form here given presupposes a negociation between *G. H.* the purchaser, and the lord, for a surrender of the exist-

ing copy, and a re-grant for three new lives. And see sect. 6 of the late statute of wills, 1 Vict. c. 26.

(*o*) The author here supposes that *G. H.* wishes to exchange both the lives and to add a third, and is the sole purchaser.

renders into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, All &c., with the appurtenances, and all the estate and interest of the said *G. H.* therein or thereto, *to the intent* that the lord may re-grant the same premises to the said *G. H.*, *I. K.* of &c., now aged — years or thereabouts, and *L. M.* of &c., now aged — years or thereabouts, for the term of their lives, and the life of the longest liver of them successively, according to the custom of this manor.

(5. *b*). To which said *G. H.*, *I. K.*, and *L. M.*, the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said — — hereditaments and premises, with the appurtenances, unto the said *G. H.*, *I. K.*, and *L. M.*, for the term of their lives, and the life of the longest liver of them *successively* (*p*), to be holden of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient annual rent or rents and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *G. H.* is admitted tenant thereof, and pays to the lord for a fine, for the estate and interest so granted as aforesaid, the sum of £ — — —, and his fealty is respited.

(*Admittance of C. D. (the second life); surrender by him and E. F. (the third life), in order to fill up the copy, and re-grant accordingly*) (*q*).

(6. *a*). At this court comes *C. D.*, the life next in succession after the life of *A. B.*, whose death was presented at the last general court, and prays to be admitted tenant under and by virtue of a grant made at a court holden for this manor, on the — day of —, to the said *A. B.*, and *C. D.* and *E. F.* of &c., for the term of their lives, and the life of the longest liver of them *successively*, to All &c., with the appurtenances: to which said *C. D.*, the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said — — hereditaments and premises, with the appurtenances, unto the said *C. D.*, according to the form and effect of the aforesaid grant, to be holden of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient annual rent or rents and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *C. D.* is admitted tenant thereof in manner and form aforesaid, and his fealty is respited.

(6. *b*). And afterwards at this court come the said *C. D.* and *E. F.*, and in open court surrender into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, All and singular the said customary or copyhold

(*p*) Although the custom should fix the estate in the lives in succession, yet *I. K.* and *L. M.* would be trustees for *G. H.* Ante, pt. 1, p. 409 et seq.

was the sole purchaser, and paid the full fine, and that the renewal fine was paid by his devisee or personal representative. Ante, pt. 1, pp. 408, 409.

(*q*) The author supposes here that *A. B.*

— hereditaments and premises to which the said *C. D.* hath been so admitted at this court as aforesaid; and all the estate and interest of the said *C. D.* and *E. F.* respectively therein or thereto, *to the intent* that the lord may re-grant the same premises to the said *C. D.*, and *E. F.*, and *G. H.* of &c., now aged — years or thereabouts, for the term of their lives and the life of the longest liver of them *successively*, according to the custom of this manor.

(6. *c*). To which said *C. D.*, *E. F.*, and *G. H.*, the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said — — hereditaments and premises, with the appurtenances, unto the said *C. D.*, *E. F.* and *G. H.*, for the term of their lives, and the life of the longest liver of them *successively*, to be holden of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient annual rent or rents and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *C. D.* is admitted tenant thereof, and pays to the lord for a fine, for the further estate and interest so granted as aforesaid, the sum of £— — —, and his fealty is respited.

(*Presentment of the death of C. D. (the second life), and surrender by A. B. (the first life), in order to fill up the copy, and re-grant to A. B., and to E. F. and G. H. his nominees*) (*r*).

(7. *a*). At this court the homage present that *C. D.*, the second life named in a certain voluntary grant made of the tenements hereinafter described at a court holden for this manor on the — day of —, departed this life since the last general court.

And afterwards at this court comes *A. B.*, the first life named in the aforesaid voluntary grant, and in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, All &c., with the appurtenances thereof, and all the estate and interest now subsisting under and by virtue of the aforesaid voluntary grant, *to the intent* that the lord may re-grant the same premises to the said *A. B.*, *E. F.*, (the third life named in the aforesaid voluntary grant,) and *G. H.* of &c., now aged — years or thereabouts, for the term of their lives, and the life of the longest liver of them *successively*, according to the custom of this manor.

(7. *b*). To which said *A. B.*, *E. F.*, and *G. H.*, the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said — — hereditaments and premises, with the appurtenances, unto the said *A. B.*, *E. F.* and *G. H.*, for the term of their lives, and the life of the longest liver of them *successively*, to be holden of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient

(*r*) The author here supposes that *A. B.* was the sole purchaser, and that by the custom of the manor the first life may sur-

render the whole interest created by the copy. Ante, pt. 1, p. 409.

annual rent or rents and other duties and services therefore due and of right accustomed, and so (saving the right of the lord) the said *A. B.* is admitted tenant thereof, and pays to the lord for a fine, for the further estate and interest so granted as aforesaid, the sum of £ — — —, and his fealty is respited.

(Surrender by A. B. (the first life), and re-grant to the said A. B., C. D. (the second life), and G. H., his nominees) (s).

(8. a). At this court comes *A. B.*, the first life named in a certain voluntary grant made of the tenements hereinafter described at a court holden for this manor on the — day of —, and in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, All &c., with the appurtenances thereof, and all the estate and interest now subsisting under and by virtue of the aforesaid voluntary grant, to the intent that the lord may re-grant the same premises to the said *A. B.*, *C. D.*, (the second life named in the aforesaid voluntary grant,) and to *G. H.* of &c., now aged — years or thereabouts, (in substitution for the life of *E. F.*, named as the third life in such former grant,) for the term of their lives, and the life of the longest liver of them *successively*, according to the custom of this manor.

(8. b). To which said *A. B.*, *C. D.*, and *G. H.*, the lord of this manor, by the said steward, grants seizin thereof by the rod, to have and to hold the said — — hereditaments and premises, with the appurtenances, unto the said *A. B.*, *C. D.*, and *G. H.*, for the term of their lives, and the life of the longest liver of them *successively*, to be holden of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient annual rent or rents and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *A. B.* is admitted tenant thereof, and pays to the lord for a fine, on such exchange of life as aforesaid, the sum of £ — — —, and his fealty is respited.

(Reversionary grant for three lives) (t).

(9). At this court comes *A. H.*, the only child of *G. H.* of &c., and which said *G. H.*, *I. K.* of &c., and *L. M.* of &c., hold the customary or copyhold hereditaments hereinafter described for the term of their lives, and the life of the longest liver of them *successively*, and in open court takes of the lord of this manor, by the said steward, by the rod, according to the custom of this manor (*u*), the reversion of All &c., with the appurte-

(s) The author here also supposes that *A. B.* was the sole purchaser, and that by the custom the first life may surrender the copy.

(t) In the absence of any special custom, a grant in reversion operates as an admittance. See & Loveless, 2 Barn. & Ald. 453. Ante, pt. 1, p. 311, n. (i), 467.

(u) Grants of this nature are not common, but may exist by special custom. Ante, pt. 1, pp. 94, 95, 357.

The custom prevails in some prebendal manors usually granted out to lessees for a term of years, and where the copyholders have not a tenant-right of renewal.

nances, to hold the same unto the said *A. H.*, now aged — years or thereabouts, *A. B.*, now aged — years or thereabouts, and *C. D.*, now aged — years or thereabouts, for the term of their lives, and the life of the longest liver of them *successively*, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient annual rent or rents and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *A. H.* is acknowledged to have taken such reversionary estate as aforesaid, and he paid, as a fine for the same, the sum of £— — —, and his fealty is respited until &c.

(*Surrender by G. H., (the purchaser and only remaining life,) and re-grant to N. O., a mortgagee, his executors, &c., for the life of the said G. H., and admittance of the said N. O.*)

(10. a). At this court comes *G. H.*, who holds the customary or copyhold hereditaments hereinafter described for the term of his life, and in consideration of the sum of £— — —, of lawful money &c., to him the said *G. H.* in hand well and truly paid by *N. O.* of &c., in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, All &c., with the appurtenances; and all the estate and interest of the said *G. H.* therein and thereto, to the intent that the lord may re-grant the same premises to the said *N. O.*, his executors, administrators and assigns, for the term of the life of the said *G. H.*, according to the custom of this manor, subject nevertheless to and upon this express condition, that if the said *G. H.*, his heirs, executors or administrators, do and shall well and truly pay, or cause to be paid unto the said *N. O.*, his executors, administrators or assigns, the sum of £— — —, of lawful money aforesaid, on the — day of —, with interest for the same, after the rate of 5l. per cent. per annum, computed from the date of this surrender, clear of all taxes and deductions whatsoever, (and being the same principal and interest monies as are mentioned to be secured by the covenant of the said *G. H.* contained in an indenture bearing even date with this surrender,) then the said *N. O.*, his executors, administrators or assigns, shall forthwith, at the costs and charges of the said *G. H.*, re-surrender the said hereditaments and premises into the hands of the lord, to the intent that he will re-grant the same to the said *G. H.* for the term of his life.

(10. b). To which said *N. O.* the lord of this manor, by the said steward, grants seizin thereof by the rod, to have and to hold the said customary or copyhold hereditaments and premises, with the appurtenances, unto the said *N. O.*, his executors, administrators and assigns, for the term of the life of the said *G. H.*, subject nevertheless to and upon the express condition aforesaid, to be holden of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *N. O.* is admitted

tenant thereof in manner and form aforesaid, and pays to the lord for a fine, on such his admittance, the sum of £— — —, and his fealty is respited (*x*).

(*Surrender to the lord by A. B., (a copyholder for three lives,) and grant to G. H. a mortgagee, his executors &c., for the same lives, and his admittance*) (*y*).

(11. *a*). At this court comes *A. B.*, the first life named in a certain grant made of the customary or copyhold hereditaments hereinafter described at a court holden for this manor on the — day of —, and in consideration of the sum of £—, of lawful money &c., to the said *A. B.* in hand well and truly paid by *G. H.* of &c., in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, All &c., with the appurtenances to the same premises belonging or in anywise appertaining, *to the intent* that the lord may re-grant the same premises to the said *G. H.*, his executors, administrators and assigns, for the term of the lives of the said *A. B.*, *C. D.*, the second life named in the aforesaid grant, and *E. F.*, the third life named in the same grant, and the life of the longest liver of them, according to the custom of this manor, upon this condition, nevertheless, that if the said *A. B.*, his heirs, executors or administrators, do and shall well and truly pay, or cause to be paid, unto the said *G. H.*, his executors, administrators or assigns, the full sum of £— — —, of lawful money aforesaid, with interest for the same, after the rate of 5*l.* per cent. per annum, computed from the date of this surrender, clear of all taxes and deductions whatsoever, (and being the same principal and interest monies as are mentioned to be secured by the covenant of the said *A. B.* contained in an indenture bearing even date with this surrender,) then the said *G. H.*, his executors, administrators or assigns, shall forthwith, at the costs and charges of the said *A. B.*, his executors, administrators or assigns, re-surrender the said hereditaments and premises, with the appurtenances, into the hands of the lord of this manor, to the intent that he will re-grant the same premises to the said

(*x*) In this surrender the author has presumed that *G. H.*, *I. K.*, and *L. M.*, were equal purchasers, so that *G. H.* could not give a security beyond his own life.

As the surrender to the lord operates as a merger of the copyhold interest, the author submits that the mortgagee should always be admitted, when the mortgage is of a copyhold for lives, and the legal interest is made the subject of transfer:— it is true that the lord would be intitled to a heriot on the death of the mortgagee, ante, pt. 1, p. 377, but it is the same in mortgages of heriotable copyholds of inheritance, when the surrenderee is ad-

mitted.

And as the whole interest passes out of the copyholder, and vests in the lord, in a mortgage of copyholds for lives, the author would also submit, that a release of the equity of redemption is more properly the subject of a common law assurance, than of a surrender in the court of the lord.

(*y*) The author has here presumed that *A. B.* was the sole purchaser, and by the custom, as the first *cestuy que vie* named in the copy, could destroy the whole estate created by it. Sup. n. (*f*).

A. B., C. D., and E. F., for the term of their lives, and the life of the longest liver of them successively.

(11. *b*). To which said *G. H.* the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said customary or copyhold hereditaments and premises, with the appurtenances, unto the said *G. H.*, his executors, administrators and assigns, for the term of the lives of the said *A. B., C. D., and E. F.*, and the life of the longest liver of them, subject nevertheless to and upon the express condition aforesaid, *to be holden* of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *G. H.* is admitted tenant thereof, in manner and form aforesaid, and pays to the lord for a fine, on such his admittance, the sum of £— — —, and his fealty is respited.

(*Presentment of conditional surrender, by way of mortgage, from A. B. (a copyholder for three lives) to G. H. his executors, &c.*) (*z*).

(12). At this court it is presented by the homage, that *A. B.*, who some time since purchased the customary or copyhold hereditaments hereinafter described for the term of the lives of him the said *A. B., C. D.* of &c., and *E. F.* of &c., and the life of the longest liver of them *successively*, and took a grant thereof from the lord of the said manor accordingly, on the — day of — now last past came before the said steward, and in consideration of the sum of £— — —, of lawful money &c., paid to the said *A. B.* by *G. H.* of &c., did out of court surrender into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, All &c., with the appurtenances to the same premises belonging or appertaining; and all the estate, right, title and interest, of the said *A. B.* at law or in equity, in, to or out of the same premises, and every part thereof, *to the use* of the said *G. H.*, his executors, administrators and assigns, for and during the natural lives of the said *A. B., C. D., and E. F.*, and the life of the longest liver of them *successively*, according to the custom of this manor, subject nevertheless to and upon this express condition, that if the said *A. B.*, his heirs, executors or administrators, did and should well and truly pay, or cause to be paid, unto the said *G. H.*, his executors, administrators or assigns, the sum of £— — —, of lawful money aforesaid, on the — day of —, with interest for the same after the rate of 5*l.* per cent. per annum, computed from the date of the said surrender, clear of all taxes and deductions whatsoever, (and being the same principal and interest monies as are mentioned to be secured by the covenant of the said *A. B.* contained in an

(*z*) The author has here presumed that *A. B.* was the sole purchaser, but had no power to destroy the legal estate of the other *cestui que vies*; so that in case of the ad-

mittance of the mortgagee, he would have an equitable lien only on the estate, after the death of *A. B.*

indenture bearing even date with the said surrender,) then the said surrender was to be void, otherwise to remain in full force and virtue.

(Admittance of G. H. under a forfeited condition, in a surrender of copyholds for lives) (a).

(13.) At this court it is found and presented by the homage, that default was made in payment of the said principal sum of £— — —, secured to *R. S.* of &c., by a conditional surrender from *L. M.* of &c., of certain customary or copyhold hereditaments, lying within and holden of this manor, and held by the said *L. M.* for the natural lives of him the said *L. M.*, *B. B.* of &c., and *C. C.* of &c., and the life of the longest liver of them *successively*, which same surrender was presented and inrolled at the last general court held for this manor; and by which default the condition of the said surrender hath become forfeited.

And at this court comes the said *R. S.*, and prays to be admitted to the customary or copyhold hereditaments lying within and holden of this manor, so surrendered to his use as aforesaid, to wit, to All &c., with the appurtenances, to whom the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said customary or copyhold — — — hereditaments and premises, with the appurtenances, unto the said *R. S.*, his executors, administrators, and assigns, for and during the lives of the said *L. M.*, *B. B.*, and *C. C.*, and the life of the longest liver of them *successively*, to be holden of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed, and so (saving the right of the lord, and of any person having an equity of redemption in the premises), the said *R. S.* is admitted tenant thereof in manner and form aforesaid, and pays to the lord for a fine on such his admittance the sum of £— — —, and his fealty is respited.

(Presentment of warrant to enter satisfaction on conditional surrender of copyholds for lives; surrender by the mortgagee to the lord; and regrant.)

(14. a). At this court the homage present a certain warrant under the hand of *C. D.* of &c., bearing date the — day of —, whereby the said *C. D.* did acknowledge to have received of and from *A. B.* of &c., all principal and interest monies secured and made payable under and by virtue of a conditional surrender of certain customary or copyhold hereditaments, lying within and holden of this manor, made by the said *A. B.* at a court held the — day of —, [or made out of court on, &c., and inrolled at a general court held, &c.,] and therefore the said *C. D.* thereby authorized the steward of this manor to enter satisfaction for the same on

(a) This form is framed on the presumption of a forfeiture of a condition, in a surrender similar to the last.

the court rolls thereof, whereupon satisfaction is entered by the said steward accordingly.

(14. *b*). (*b*) And afterwards at this same court comes the said *C. D.*, and, in consideration of such payment and satisfaction as aforesaid, in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, All &c., with the appurtenances, (to which same premises the said *C. D.* was admitted, to hold to him, his executors, administrators and assigns, for the lives of the said *A. B.*, *E. F.* of &c., and *G. H.* of &c., and the life of the longest liver of them, by virtue of the said conditional surrender at the said court held for this manor on the — day of —,) and all the estate, right, and interest whatsoever, of the said *C. D.* therein or thereto; *to the intent* that the lord may re-grant the aforesaid customary or copyhold hereditaments and premises to the said *A. B.*, *E. F.*, and *G. H.*, for the term of their lives, and the life of the longest liver of them *successively*, according to the custom of this manor.

(14. *c*). To which said *A. B.*, *E. F.*, and *G. H.*, the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said — hereditaments and premises, with the appurtenances, unto the said *A. B.*, *E. F.*, and *G. H.*, for the term of their lives, and the life of the longest liver of them *successively*, to be holden of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed, and so (saving the right of the lord) the said *A. B.* is admitted thereto, in manner and form aforesaid, and pays to the lord for a fine on such his admittance the sum of —, of the lord's favour, and his fealty is respited.

(*Surrender by A. B. (a copyholder for three lives) to the use of a purchaser, for the same lives, and his admittance*) (*c*).

(15. *a*). At this court comes *A. B.*, who, at a court holden for this manor on the — day of —, was admitted to the customary or copyhold hereditaments hereinafter described, to hold to him the said *A. B.*, his executors and administrators, [or his heirs, as the custom may be,] for the lives of *C. D.*, *E. F.*, and *G. H.*, and the life of the longest liver of them (*d*), and, in consideration of the sum of £ — of lawful money

(*b*) The author has here presumed that *A. B.* was the sole purchaser, and by the custom (as the first *cestuy que vie*) could destroy the whole estate. Ante, p. 804, n. (*i*).

The form of re-surrender will be very similar, where the mortgagor (a sole purchaser) has no power, by the custom, to destroy the legal estate of the other *cestui que vies*. See ante, p. 811, n. (*z*).

(*c*) The author has here presumed that *A. B.* was the sole purchaser, and that a

grant for lives in *succession* is not customary in the particular manor.

Note. A grant by copy for the lives of others will not give an estate to the *cestui que vies* without a custom. Ante, p. 1, p. 99.

(*d*) Under the form of *A. B.*'s admittance, his executors or administrators, or heirs, (as the case might be,) would take as special occupants. Ante, pt. 1, pp. 51, 351. There can be no general occupant of copyholds; ib. 50, 51, 89, 351.

&c., to him in hand well and truly paid by *I. K.* of &c., in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, All &c., with the appurtenances; and all the estate, right, title and interest whatsoever of the said *A. B.* in, to or out of the same premises, to the use of the said *I. K.*, his executors and administrators, [or his heirs as the custom may be,] for and during the lives of the said *C. D.*, *E. F.*, and *G. H.*, and the life of the longest liver of them, according to the custom of this manor.

(15. *b*). To which said *I. K.*, (being present here in court,) the lord of this manor, by the said steward, grants seizin of the same premises by the rod, *to have and to hold* the said customary or copyhold — — hereditaments and premises, with the appurtenances, unto the said *I. K.*, his &c., for and during the lives of the said *C. D.*, *E. F.*, and *G. H.*, and the life of the longest liver of them, to be holden of the lord, by copy of court-roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *I. K.* is admitted tenant thereof in manner and form aforesaid, and pays to the lord for a fine on such his admittance the sum of £— — —, and his fealty is respited.

(*Admittance of a widow to her free-bench, in copyholds for lives*) (*e*).

(16). At this court comes *B. B.*, widow of *A. B.*, whose death had been presented at this court, and who held the customary or copyhold hereditaments hereinafter described for the term of the lives of him the said *A. B.*, *C. D.* of &c., and *E. F.* of &c., and the life of the longest liver of them *successively*, and prays to be admitted according to the custom of this manor (*f*), for the term of her widow's estate, to the same hereditaments, to wit, to All &c., with the appurtenances; to which said *B. B.*, the lord of this manor by the said steward grants seizin thereof by the rod, *to have and to hold* the said — — hereditaments and premises, with the appurtenances, unto the said *B. B.*, for the term of her widow's estate therein, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *B. B.* is admitted tenant thereof in manner and form aforesaid, and pays to the lord for a fine on such her admittance the sum of £— — —, and her fealty is respited.

(*e*) Ante, pt. 1, p. 72.

(*f*) But when a wife is entitled to the whole of the copyhold for her life, or widowhood, or other estate, admittance

would not seem to be necessary, except by special custom, her interest being a continuation of the possession of the husband. Ante, pt. 1, pp. 77, 298.

(Surrender of a widow's estate, and grant for three lives.)

(17. a). At this court comes *F. C.*, widow of *A. C.* deceased, and who claims to hold the customary or copyhold hereditaments hereinafter described for the term of her widowhood, according to the custom of this manor, and in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, All &c., with the appurtenances; and all the estate, right and interest of the said *F. C.*, therein or thereto, *to the intent* that the lord may re-grant the same premises to the said *F. C.*, for the lives of herself and her son and daughter *C. C.* and *H. C.*, and the life of the longest liver of them *successively* (*g*), according to the custom of this manor.

(17. b). To which said *F. C.*, the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* the said — — hereditaments and premises, with the appurtenances, unto the said *F. C.*, *C. C.*, and *H. C.*, for the term of their lives, and the life of the longest liver of them *successively*, to be holden of the lord, by copy of court-roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed, and so (saving the right of the lord) the said *F. C.* is admitted tenant thereof in manner and form aforesaid, and pays to the lord for a fine on such her admittance the sum of £— — —, and her fealty is respited.

(Surrender of copyhold for lives to the lord, as purchaser, and re-grant for one life to a trustee for the lord) (h).

(18. a). At this court comes *B. H.*, one of the customary or copyhold tenants of this manor, and in consideration of the sum of £—, of lawful money &c., to him in hand well and truly paid by the said *A. Z.*, lord of this manor, in full and open court surrenders into the hands of the said lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, and also releases All &c., to which said customary or copyhold hereditaments and premises, with other hereditaments, the said *B. H.* was admitted, to hold to him his executors, administrators and assigns, for the lives of him the said *B. H.*, *E. F.* of &c., and *G. H.* of &c., and the life of the longest liver of them, at a court holden for this manor on the — day of —; and all the estate, right, title, interest, benefit, power, claim and demand whatsoever, which the said *B. H.* now hath in, to, or out of the same premises, or any part thereof,

(*g*) This surrender supposes that *A. C.*, (the husband of *F. C.*), was the last life named in the former copy; and that his widow, and their children, (*C. C.* and *H. C.*), were purchasers for their lives *successively*.

(*h*) The author has here supposed, that the custom authorizes a grant for three lives, but that the lord preferred acting on his right to put in a single life, (ante, pt. 1, p. 99,) as his own trustee.

to the use of the said *A. Z.*, lord of this manor, to the end and intent that he may do therewith his will and pleasure.

(18. *b*). And afterwards at this court the lord of this manor, by his said steward, in consideration of the sum of 5*s.* of lawful money aforesaid to him in hand paid by *C. D.* of &c., doth grant seizin by the rod, according to the custom of this manor, unto the said *C. D.*, of all and singular the — hereditaments and premises hereinbefore described (*i*), *to have and to hold* the said hereditaments and premises, with the appurtenances, unto the said *C. D.*, for the term of his life, to be holden of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, the annual rent of £— — —, being an apportionment of the ancient annual rent of £— — — (*k*), and other the duties and services therefore due and or right accustomed, and so (saving the right of the lord) the said *C. D.* is admitted tenant thereof in manner and form aforesaid, and his fealty is respited.

(*i*) If surrendered to the lord out of court, the entry would be, “of All &c., being part and parcel of the customary or copyhold hereditaments heretofore granted to *B. H.* of &c., to hold by copy of court-roll of this manor, for the lives of &c.,

(and which said hereditaments and premises lately came into the hands of the said lord of this manor by purchase of and from the said *B. H.*”).

(*k*) Ante, pt. 1, pp. 94, 366.

PRECEDENTS OF ROLLS OF CUSTOMARY COURTS BARON,

HELD WITHOUT THE PRESENCE OF HOMAGERS, UNDER THE 86TH SECTION OF 4 & 5 VICT. C. 35; AND OF A VOLUNTARY GRANT AND ADMISSIONS BY THE STEWARD OUT OF COURT, UNDER THE 87TH AND 88TH SECTIONS (a).

[NOTE.—*The forms of a precept of seizure quousque, surrender to will in court, and surrender to a purchaser out of court, (leading to his admission at the same time and place,) and his surrender to will, are repeated, in order to save the inconvenience of referring to those precedents, ante, 757, 759; post, 828.*]

ROLL OF GENERAL CUSTOMARY COURT BARON, *Held by the steward without the presence of homagers.*

The manor of ——— } A General Customary Court Baron of A. Z., lord
in the county of ——— } of the said manor, holden in and for the said
manor on ——— the ——— day of ——— in the ——— year
of the reign of our sovereign Lady Victoria, by the
grace of God of the United Kingdom of Great Britain
and Ireland Queen, Defender of the Faith, and in the
year of our Lord ———, before J. S., Esquire, steward
of the said manor.

(Death of A. B., first proclamation (b), and first default recorded) (c).

Whereas A. B., one of the customary tenants of this manor, lately departed this life, *wherefore* at this court proclamation is made for any per-

(a) The powers created by those sections took effect 1st Jan. 1842.

(b) The 86th section provides, that proclamations at courts so holden shall not affect the right or title of any person not present, unless notice thereof shall have been served on such person or persons within one month after such meeting [court].

And note, that personal notice served on the heir (or other person entitled to be admitted), if known, that the lord on a day, and at a convenient place, to be named, (either in or out of court,) will be

ready to admit such heir or other person, would render proclamations unnecessary, ante, pt. 1, pp. 285, 286, 287.

(c) But should the customary heir appear and claim to be admitted, omit the words "*and first default recorded,*" and also the words within brackets at the end of the proclamation, and the following may be the form of admission, (which, with very little variation, will serve for the admittance of the heir at a subsequent court, or out of court; and see form for the admittance of a customary heir out of court, post).

son or persons claiming title to the customary or copyhold hereditaments lying within and holden of this manor, whereof the said *A. B.* died seized, to come into court and be admitted thereto, otherwise the same will be seized into the hands of the lord for want of a tenant, [but no one comes, therefore the first default is recorded].

(*Admittance of C. B., customary heir of A. B., and surrender to will*) (*d*).

At this court comes *C. B.*, the eldest son and heir, according to the custom of this manor, of [the said] *A. B.*, deceased, and prays to be admitted to all and singular the customary or copyhold hereditaments lying within and holden of this manor, whereof the said *A. B.* [so] lately died seized [as aforesaid], to wit, to All &c., with their appurtenances, (and to which same premises the said *A. B.* was admitted at a general court holden in and for this manor, on the — day of — ;) *To which* said *C. B.*, the lord of this manor by the said steward, grants seizin thereof by the rod, *to have and to hold* the said — hereditaments and premises, with their appurtenances, unto the said *C. B.* and his heirs, to be holden of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, [the ancient annual rent or rents, heriot when it shall happen, and other the duties and services therefore due and of right accustomed (*e*),] and so (saving the rights of the lord) the said *C. B.* is admitted tenant thereof, and pays to the lord on such his admittance a fine certain of — — (*f*), and his fealty is respited.

And afterwards at this same court the said *C. B.* surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, all and singular the said customary or copyhold — — hereditaments and premises, with their appurtenances, to which he the said *C. B.* hath been admitted at this court as aforesaid, to the use of such person or persons, and for such estate or estates, ends, intents, and purposes, as he the said *C. B.* in and by his last will and testament in writing already made (*g*), or hereafter to

(*d*) A surrender by a copyholder to the uses declared or to be declared by his will, is more especially desirable since the act of 1 Vict. c. 26, ante, pt. 1, pp. 233, 247, 257.

(*e*) Assuming that quit-rents and heriots have been commuted under the provisions of the act 4 & 5 Vict. c. 35, omit the words within brackets, and substitute the words “and other the duties and services therefore due and of right accustomed, (except such manorial rights in respect of the aforesaid hereditaments and premises as have been commuted pursuant to the act of parliament passed in the 5th year of the reign of our said sovereign lady Queen Victoria, chapter 35, but subject

and without prejudice to the rent-charge, and fine certain on death, made payable in lieu of the said manorial rights under the commutation agreement).”

(*f*) This assumes that a fine certain on admission is payable by the custom; or that a small fixed fine on death, under the 14th section of the above statute, or a fine certain, or relatively certain, on death, under the 15th section, is made payable to the lord by the terms of the commutation agreement.

(*g*) Note, by 1 Vict. c. 26, s. 3, a person entitled to be admitted to copyholds, whether as heir, devisee, or otherwise, may devise before admittance.

be made, hath given, devised, directed, limited, or appointed, or shall give, devise, direct, limit, or appoint the same.

(*Second proclamation on death of C. D., and second default recorded*) (*h*).

At this court the second proclamation is made for any person or persons claiming title to the customary or copyhold hereditaments lying within and holden of this manor whereof *C. D.* (whose death was recorded at the last general court) died seized, to come into court and be admitted thereto, otherwise the same will be seized into the hands of the lord for want of a tenant, [but no one comes, therefore the second default is recorded].

(*Admittance of G. H., devisee in fee of C. D., and surrender to will*).

At this court comes *G. H.* of &c., and produces and delivers to the said steward a copy of the last will and testament (*i*) of *C. D.*, late of &c., deceased, whereby he the said *C. D.* devised all his customary or copyhold hereditaments lying within and holden of this manor, by the description of &c., unto the said *G. H.*, his heirs and assigns for ever.

Now at this court comes the said *G. H.*, and prays to be admitted to the customary or copyhold hereditaments within this manor so devised to him by the said *C. D.* as aforesaid, to wit, to All &c., with their appurtenances, (and to which same hereditaments and premises the said *C. D.* was admitted at a special court held in and for this manor on the — day of — ;)
To which said *G. H.*, the lord of this manor, by the said steward, grants seizin thereof by the rod, *to have and to hold* all and singular the said — — hereditaments and premises, with their appurtenances, unto the said *G. H.* and his heirs, to be holden of the lord by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, [and the ancient annual rent or rents, heriots when they shall happen, and other the duties and services therefore due and of right accustomed (*k*),] and so (saving the rights of the lord) the said *G. H.* is admitted tenant

(*h*) But should a devisee appear and claim to be admitted, omit the words "*and second default recorded*," and the words within brackets at the end of the proclamation; and the following may be the form of admission, (which, with very little variation, will serve for the admittance of the devisee at a subsequent court, or out of court,—and see the form for the admittance of a devisee out of court, post).

(*i*) Vide s. 89 of the above mentioned act of 4 & 5 Vict. c. 35, which provides, that, after 31st Dec. 1841, every surrender and deed of surrender to be accepted by the lord, and "every will and codicil, a copy of which respectively shall be delivered to the lord of the manor of which

the lands affected by such surrender, deed of surrender, will and codicil are parcel, or to his steward, or the deputy of such steward, either at any court holden for such manor at which there shall not be any homage assembled, or out of court, and also every grant and admission by the lord of any manor, or his steward, or the deputy of such steward, pursuant to this act, shall be *forthwith* entered on the court-rolls of the manor by such lord, or steward or deputy;" and that every such entry shall be deemed to be an entry made in pursuance of a presentment at a court by the homage assembled thereat. Ante, pt. 1, pp. 102, 103; and see the act in the appendix.

(*k*) Ante, p. 818, n. (*e*).

thereof, and pays to the lord on such his admittance a fine certain of —
— (l), and his fealty is respited.

[*Surrender to will to follow, in the same form as the surrender by
C. B., the customary heir of A. B., after his admittance, ante.*]

(*Third proclamation on death of E. F.; third default recorded; and
precept of seizure awarded.*)

At this court the third proclamation is made for any person or persons claiming title to the customary or copyhold hereditaments lying within and holden of this manor, whereof *E. F.* (whose death was presented at a general court held the — day of —) died seized, to come into court and be admitted thereto, otherwise the same will be seized into the hands of the lord for want of a tenant, and because no person claims to have title and to be admitted to the same hereditaments, the third default is recorded, and a precept is awarded and issued, under the hand and seal of the said steward, to *W. Y.*, the bailiff of this manor, to seize the same customary or copyhold hereditaments into the hands of the lord of this manor, for his use and benefit, until some person or persons shall establish his, her or their right to be admitted to the vacant tenancy (m).

(*Form of the abovementioned precept of seizure quousque.*)

The manor of — }
in the county of — } To *W. Y.*, bailiff of the said manor (n).

Whereas public proclamation hath been made at three consecutive (o) general customary courts baron holden in and for the said manor on the — day of —, the — day of —, and the — day of —, for any person or persons claiming title to the customary or copyhold lands and hereditaments lying within and holden of the same manor of which *E. F.* lately died seized, to come into court and be admitted thereto; And forasmuch as no person thereupon appeared and claimed to be admitted to the said lands and hereditaments (p), *It is commanded and ordered* that you *W. Y.* do seize, and you are hereby authorized and required to seize, into the hands and for the use of the lord of the said manor, all and singular the said customary or copyhold lands and hereditaments of which the said *E. F.* so died seized, in the mean time and until some person or persons shall appear and make good his, her or their claim to be admitted tenant

(l) Ante, p. 818, n. (f).

(m) If the custom allows of an absolute seizure, this entry must be varied accordingly. Ante, pt. 1, p. 285, et seq.

(n) On executing the precept, the bailiff should require the occupier to attorn tenant to the lord; ante, pt. 1, p. 356. In case of any refusal to attorn, an ejectment may be brought by the lord or his grantee.

(o) Ante, pt. 1, p. 286, &c.—The rule

that the proclamations must be made at consecutive courts is clearly applicable to courts held without the presence of homagers under the 86th sect. of 4 & 5 Vict. c. 35.

(p) See instructions for varying this form to serve for a precept of seizure on the non-appearance of a surrenderee, (under a special custom,) to compel his admission, post, 828, n. (c).

or tenants thereof (*q*): *And you are hereby also commanded and required to make your return to this precept forthwith (r).* Given under my hand and seal this — day of —, in the year of our Lord —.

J. S., steward (L. s.)

(Form of voluntary grant in fee out of court, by the steward, of the lands seized quousque under the above precept.)

The manor of — } Whereas at a general customary court baron held
in the county of — } in and for the said manor on the — day of —,
E. F. of &c., was admitted tenant of the customary or copyhold lands and hereditaments hereinafter described, with their appurtenances, to hold to him the said *E. F.* and his heirs by copy of court-roll, at the will of the lord, according to the custom of the said manor. And whereas the said *E. F.* hath since departed this life. And whereas at a general customary court baron held in and for the said manor on the — day of —, proclamation was made, according to the custom of the same manor, for any person or persons claiming title to the customary or copyhold hereditaments lying within and holden of the said manor whereof the said *E. F.* died seized, to come into court and be admitted thereto, otherwise the same would be seized into the hands of the lord for want of a tenant, but no one came, therefore the first default was recorded. And whereas at another general customary court baron held in and for the said manor on the — day of —, the second proclamation was made in like manner as aforesaid, but no one came to claim admittance to the said hereditaments, therefore the second default was recorded. And whereas at another general customary court baron held in and for the said manor on the — day of —, the third proclamation was made in like manner as aforesaid, but no one came to claim admittance to the said hereditaments, therefore the third default was recorded, and a precept was awarded and issued, under the hand and seal of *J. S.*, steward of the said manor, to *W. Y.*, the bailiff of the same manor, to seize the said customary or copyhold lands and hereditaments into the hands of the lord, for his use and benefit, until some person or persons should establish his, her or their right to be admitted to the vacant tenancy. And whereas the said *W. Y.*, by a memorandum in writing under his hand, dated the — day of —, indorsed on the precept so awarded and issued as aforesaid, certified that by virtue of the same precept he did on the last-mentioned day seize the said lands and hereditaments into the hands and for the use of the lord as commanded, which said certificate hath been entered on the court-rolls of the said manor.

Now be it remembered that on this — day of — the lord of the said

(*q*) See as to the form of precept to seize absolutely, when by the custom the non-appearance creates a forfeiture, post, 828.

(*r*) The bailiff's return, in the following form, should be indorsed, and a minute of it entered by the steward on the court-rolls, viz. :—

“ I do hereby certify that by virtue of the within precept I did this day seize the within-mentioned lands and hereditaments into the hands and for the use of the lord, until &c., as commanded by the same precept. Witness my hand this — day of —.
W. Y.”

manor, by the said *J. S.*, steward of the same manor, and on the prayer of *I. K.* of &c., did grant and deliver seizin by the rod unto the said *I. K.* of All &c., with the appurtenances to the same premises belonging or appertaining, *to have and to hold* the said customary or copyhold lands, hereditaments and premises, with their appurtenances, unto the said *I. K.* and his heirs, to be holden of the lord by copy of court roll at the will of the lord, according to the custom of the said manor, by fealty, suit of court, fine on admission, the ancient annual rent or rents, heriots when they shall happen, and other the duties and services therefore due and of right accustomed (*s*); and so (saving the rights of the lord) the said *I. K.* is by the said steward admitted tenant of the same premises, and pays to the lord for a fine on such his admittance the sum of £— — —, and his fealty is respited.

J. S., steward.

(Form of admittance out of court, by the steward, of a customary heir, and his surrender to will).

The manor of ——— } Be it remembered that on the — day of —, in the county of — } in the year of our Lord —, *L. M.* of &c., the eldest brother and heir, according to the custom of the said manor, of *A. M.* deceased, late one of the customary tenants of the aforesaid manor, came before *J. S.* steward of the same manor, out of court, that is to say, at his dwelling-house situate &c., and by virtue of the provisions contained in an act of parliament passed in the fifth year of the reign of her present Majesty Queen Victoria, intituled “An Act for the Commutation of certain Manorial Rights in respect of Lands of Copyhold and Customary Tenure, and in respect of other Lands subject to such rights, and for facilitating the Enfranchisement of such Lands, and for the improvement of such Tenure,” prayed to be admitted to all and singular the customary or copyhold hereditaments lying within and holden of the said manor whereof the said *A. M.* died seized, to wit, to All &c., with their appurtenances (and to which same premises the said *A. M.* was admitted at a special court held in and for the said manor on the — day of —); *To which* said *L. M.*, the lord of the said manor, by the said steward, granted seizin thereof by the rod, *to have and to hold* the said — — hereditaments and premises, with their appurtenances, unto the said *L. M.* and his heirs, to be holden of the lord by copy of court roll, at the will of the lord, according to the custom of the said manor, by fealty, suit of court, the ancient annual rent or rents, heriot when it shall happen, and other the duties and services therefore due and of right accustomed (*t*); and so (saving the rights of the lord) the said *L. M.* is by the said steward admitted tenant thereof, and pays to the lord on such his admittance a fine certain of £— — — (*u*), and his fealty is respited.

And be it further remembered, that on the said — day of — the said

(*s*) Ante, 818, n. (*e*).

(*u*) Ante, 818, n. (*f*).

(*t*) See the note last above referred to.

L. M. did surrender into the hands of the lord of the said manor, by the hands and acceptance of the said steward, at his aforesaid dwelling-house, by the rod, according to the custom of the said manor, all and singular the said customary or copyhold — — hereditaments and premises, with their appurtenances, to which he the said *L. M.* hath been so admitted tenant as aforesaid, to the use of such person or persons, and for such estate or estates, ends, intents and purposes as he the said *L. M.*, in and by his last will and testament in writing already made (*x*), or hereafter to be made, hath given, devised, directed, limited or appointed, or shall give, devise, direct, limit or appoint the same.

J. S., steward.

(Form of admittance out of court, by the steward, of a devisee in fee, and his surrender to will.)

The manor of — } Be it remembered that on the — day of —,
in the county of — } in the year of our Lord —, *B. N.* of &c., came
before *J. S.* —, steward of the said manor, out of court, that is to say, at
his dwellinghouse situate &c., and produced and delivered to the said
steward a copy of the last will and testament (*y*) of *C. O.*, late of &c., de-
ceased, whereby he the said *C. O.* devised all his customary or copyhold
hereditaments, lying within and holden of the said manor, by the descrip-
tion of &c., unto the said *B. N.*, his heirs and assigns for ever, according
to the custom of the said manor; and the said *B. N.*, by virtue of the
provisions contained in an act of parliament passed in the fifth year of the
reign of her present Majesty Queen Victoria, intituled “An Act for the
Commutation of certain Manorial Rights in respect of Lands of Copyhold
and Customary Tenure, and in respect of other Lands subject to such
Rights, and for facilitating the Enfranchisement of such Lands, and for
the improvement of such Tenure,” prayed to be admitted to all and singular
the customary or copyhold hereditaments lying within and holden of the
said manor so devised to him by the said *C. O.* as aforesaid, to wit, to All
&c., with their appurtenances, (and to which same hereditaments and pre-
mises the said *C. O.* was admitted at a general court held in and for the
said manor on the — day of —;) *To which* said *B. N.*, the lord of
the said manor, by the said steward, granted seizin thereof by the rod, *to
have and to hold* all and singular the said — — hereditaments and
premises, with their appurtenances, unto the said *B. N.* and his heirs, to
be holden of the lord by copy of court roll at the will of the lord, accord-
ing to the custom of the said manor, by fealty, suit of court, the ancient
annual rent or rents, heriots when they shall happen, and other the duties
and services therefore due and of right accustomed (*z*), and so (saving the
rights of the lord) the said *B. N.* is by the said steward admitted tenant
thereof, and pays to the lord on such his admittance a fine certain of
£— — — (*a*), and his fealty is respited.

(*x*) Ante, 818, n. (*g*).

(*y*) Ante, 819, n. (*i*).

(*z*) Ante, 818, n. (*e*).

(*a*) Ante, 818, n. (*f*).

And be it further remembered that, &c., [*surrender to will to follow in the same form as the surrender by L. M., the customary heir of A. M., after his admittance, ante*].

J. S., steward.

(Form of admittance out of court, by the steward, of devisees in trust.)

The manor of ——— } Be it remembered that on the ——— day of ———,
in the county of ——— } in the year of our Lord ———, *D. P.* of &c., and
E. Q. of &c., came before *J. S.* ———, steward of the said manor, at his dwelling-house, situate &c., and produced and delivered to the said steward a copy of the last will and testament (*b*) of *F. R.*, late of &c., deceased, whereby he the said *F. R.* devised all his customary or copyhold hereditaments, situate &c., within the said manor, unto his friends the said *D. P.* and *E. Q.*, their heirs and assigns, upon and for the trusts, intents and purposes in the same will expressed, declared and contained (*c*); and the said *D. P.* and *E. Q.* prayed to be admitted to the customary or copyhold hereditaments within the said manor so devised to them upon the trusts and in manner aforesaid, to wit, to All &c., with their appurtenances, (and to which same hereditaments and premises the said *F. R.* was admitted at a special court holden in and for the said manor on the ——— day of ———;) *To which* said *D. P.* and *E. Q.*, the lord of the said manor, by the said steward, granted seizin thereof by the rod, *to have and to hold* all and singular the said ——— hereditaments and premises, with their appurtenances, unto the said *D. P.* and *E. Q.*, and their heirs, upon and for the trusts, intents and purposes expressed and declared concerning the same in and by the said will of the said *F. R.* deceased, to be holden of the lord by copy of court roll at the will of the lord, according to the custom of the said manor, by fealty, suit of court, the ancient annual rent or rents, heriots when they shall happen, and other the duties and services therefore due and of right accustomed (*d*); and so (saving the rights of the lord) the said *D. P.* and *E. Q.* are by the said steward admitted tenants thereof in manner and form aforesaid, and pay to the lord on such their admittance a fine certain of £— — — (*e*), and their fealties are respited.

J. S., steward.

(Form of surrender, out of court by a copyholder in fee to a purchaser.)

The manor of ——— } Be it remembered that on the ——— day of ———,
in the county of ——— } in the year of our Lord ———, *G. T.* of &c., one of the customary tenants of the said manor, came before *J. S.* ———, steward of the said manor, at his dwelling-house, situate &c., and, for carrying into effect a contract made and entered into by the said *G. T.* with *H. W.* of &c., for the sale to him of the customary or copyhold hereditaments hereinafter described, for an estate of inheritance in fee simple in

(*b*) Ante, 819, n. (*i*).

(*c*) Ante, 791, n. (*o*).

(*d*) Ante, 818, n. (*e*).

(*e*) Ante, 818, n. (*f*).

possession according to the custom of the said manor, and in consideration of the sum of £—— of lawful money of &c., unto the said *G. T.* in hand paid by the said *H. W.* at the time of making this surrender, did surrender into the hands of the lord of the said manor, by the hands and acceptance of the said steward by the rod, according to the custom of the said manor, All &c., with the appurtenances to the same premises belonging or in anywise appertaining, (to which said hereditaments and premises the said *G. T.* was admitted at a general court holden in and for the said manor on the —— day of ——;) and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, benefit, power, claim and demand whatsoever of the said *G. T.* in, to, or out of the said hereditaments and premises, and every part thereof, *to the use* of the said *H. W.*, his heirs and assigns for ever, according to the custom of the said manor (*f*).

G. T.

Taken and accepted the said ——

day of ——, by me,

J. S., steward of the said manor (*g*).

(Form of admittance out of court, by the steward, of the purchaser, under the last-mentioned surrender, and his surrender to will.)

The manor of —— } Whereas *G. T.* of &c., on this —— day of ——,
in the county of —— } came before *J. S.* ——, steward of the said manor,
at his dwelling-house, situate &c., and, for carrying into effect a contract made and entered into by the said *G. T.* with *H. W.* of &c., for the sale to him of the customary or copyhold hereditaments hereinafter described, for an estate of inheritance in fee simple in possession, according to the custom of the said manor, and in consideration of the sum of £—— of lawful money &c., paid to the said *G. T.* by the said *H. W.*, did surrender into the hands of the lord of the said manor, by the hands and acceptance of the said steward by the rod, according to the custom of the same manor, All &c., with the appurtenances to the same premises belonging or in anywise appertaining (to which said hereditaments and premises the said *G. T.* was admitted at a general court holden in and for the said manor on the —— day of ——;) and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title,

(*f*) If the quit-rent, fine, heriot, the lord's interest in trees, or any of them, or other manorial rights, should have been commuted under the 4 & 5 Vict. c. 35, for a rent-charge and small fixed fine on death, add—Subject nevertheless to the rent-charge made payable in lieu of certain manorial rights by the commutation agreement entered into under the provisions of the act 4 & 5 Vict. c. 35.

(*g*) This surrender (which formerly was

presented and inrolled at the succeeding court) should be copied *forthwith* on the court rolls, under the 89th section of 4 & 5 Vict. c. 35. If any warrant of satisfaction should have been signed by a mortgagee for monies secured by a conditional surrender, (and which was also formerly presented and inrolled at the succeeding court,) it should be entered on the court rolls immediately before the surrender to the purchaser.

interest, benefit, power, claim and demand whatsoever of the said *G. T.* in, to, or out of the said hereditaments and premises and every part thereof, to the use of the said *H. W.*, his heirs and assigns for ever, according to the custom of the said manor (*h*).

Now be it remembered that on the — day of &c., the said *H. W.* came before the said steward out of court, that is to say, at his said dwelling-house, and by virtue of the provisions contained in an act of parliament passed in the fifth year of the reign of her present Majesty Queen Victoria, intituled “An Act for the Commutation of certain Manorial Rights in respect of Lands of Copyhold and Customary Tenure, and in respect of other Lands subject to such Rights, and for facilitating the Enfranchisement of such Lands, and for the improvement of such Tenure,” prayed to be admitted to the hereditaments and premises so surrendered to his use by the said *G. T.* as aforesaid; *To which* said *H. W.*, the lord of the said manor, by the said steward, granted seizin thereof by the rod, *to have and to hold* all and singular the said customary or copyhold — — hereditaments and premises, with their appurtenances, unto the said *H. W.* and his heirs, to be holden of the lord by copy of court roll at the will of the lord, according to the custom of the said manor, by fealty, suit of court, the ancient annual rent or rents, heriot when it shall happen, and other the duties and services therefore due and of right accustomed (*i*); and so (saving the rights of the lord) the said *H. W.* is by the said steward admitted tenant thereof, and pays to the lord on such his admittance a fine certain of £— — — (*k*), and his fealty is respited.

J. S., steward of the said manor.

And be it further remembered, that on the said — day of — the said *H. W.* did surrender into the hands of the lord of the said manor, by the hands and acceptance of the said steward, at his aforesaid dwelling-house, by the rod, according to the custom of the said manor, All and singular the said customary or copyhold — — hereditaments and premises, with their appurtenances, to which he the said *H. W.* hath been so admitted tenant as aforesaid, to the use of such person or persons, and for such estate or estates, ends, intents and purposes as he the said *H. W.* shall in and by his last will and testament in writing give, devise, direct, limit or appoint the same.

Taken and accepted the said —
day of —, by me,

J. S., steward of the said manor.

(*h*) See the last note.

(*k*) Ante, 818, n. (*f*).

(*i*) Ante, 818, n. (*e*).

FORMS OF PRECEPTS, SUMMONSES, &c.

[A.]

(Precept to the bailiff to summon a general customary (a) court baron).

The manor of — }
 in the county of — } To W. Y. bailiff of the said manor.

These are to require you to summon and give notice to the several and respective customary (a) tenants of the said manor of — personally to appear at a customary (a) court baron, to be holden for A. Z., lord of the same manor, on —, the — day of —, at — o'clock in the forenoon, at the usual and accustomed place, being the — — —, then and there to do their respective suit and service, and pay their respective rents due to the lord of the manor of — aforesaid. And these are also further to require you to give notice of the said court to all other persons in anywise concerned in the business thereof, in order that they may appear at the time and place above-mentioned, and for your so doing this shall be your sufficient warrant. Given under my hand and seal this — day of —, in the year of our Lord —.

J. S., steward of the aforesaid manor.

(Notice pursuant to the above precept.)

The manor of — }
 in the county of — } Notice is hereby given to all persons whom it may concern, that a general customary (a) court baron of A. Z. will be holden for the said manor on — the — day of — next, at — o'clock in the forenoon, at the usual and accustomed place, being, &c., when and where all customary tenants of the said manor are required to attend and to perform their suit and service, and pay their respective rents due to the lord of the said manor. Dated this — day of —, &c.

W. Y., bailiff.

[B.]

(The oath to be administered to the homage.)

"A. B. You as FOREMAN of this homage shall inquire and true presentment make of all such things as shall be given to you in charge, and of all such other matters as shall come to your knowledge presentable at this court, and this you shall do without fear, favour, affection, hatred or malice, to the best of your understanding, So help you God."

C. D., E. F., G. H. and I. K. (and so four at a time according to their

(a) If there are freeholders tributary to the manor, here omit the word " Customary."

seniority of tenancy.) "The like oath which *A. B.*, your foreman, hath taken on his part, you and every of you shall well and truly observe and keep on your respective parts, So help you God."

[C.]

(Precept to seize quousque, after three proclamations.)

The manor of — }
in the county of — } To *W. Y.*, bailiff of the said manor (*b*).

Whereas public proclamation hath been made at three *consecutive* general courts baron, holden for the said manor, on the — day of —, the — day of —, and the — day of — (*c*), for [any person or persons claiming title to the customary or copyhold lands and hereditaments lying within and holden of the same manor, of which *A. B.* lately died seized, to come into court and be admitted thereto, and forasmuch as no person thereupon appeared and claimed to be admitted to the said lands and hereditaments:—It is commanded and ordered that you, *W. Y.*, do seize, and you are hereby authorized and required to seize, into the hands and for the use of the lord of the said manor, all and singular the said customary or copyhold lands and hereditaments of which the said *A. B.* so died seized, *in the mean time, and until some person or persons shall appear and make good his or their claim to be admitted tenant or tenants thereof:*—And you are hereby also commanded to make your return to this precept at the next general court baron to be holden for the said manor. Given under my hand and seal this — day of —, in the year of our Lord —.

J. S., steward of the manor of —- aforesaid.

[If one only of several co-heirs should neglect to claim admittance, that circumstance must be stated, and the warrant is to be confined to the undivided share of such defaulter.]

(The bailiff's return to be indorsed on the above precept.)

I do hereby certify that by virtue of the within precept I did this day, in the presence of *S. R.* and *W. T.*, copyhold tenants of the within mentioned manor, seize the within mentioned lands and hereditaments into the hands and for the use of the lord, until &c., as commanded by the same precept. Witness my hand this — day of —.

(*b*) On executing the precept the bailiff should require the occupier to attorn tenant to the lord. Ante, pt. 1, p. 289.

(*c*) Ante, pt. 1, p. 286. When by the custom a surrenderee is compellable to be admitted, and neglects to appear after three proclamations, [ante, pt. 1, p. 291, ante, p. 747,] instead of the words within brackets say, "for *C. D.* to come in and

be admitted by virtue of a certain surrender made &c., by *A. B.* of All &c., and forasmuch as the said *C. D.* did not come to take up &c., it is commanded &c., to seize the said customary or copyhold hereditaments into the hands and for the use of the lord of the said manor until &c."

(Precept to seize absolutely.)

When by the custom of the manor the estate is forfeited for non-appearance of the heir or devisee, after three proclamations, the bailiff is to be commanded to make an *absolute* seizure, for which the above form [C] will be proper, omitting the words in italics in that precept.

And when the forfeiture is for neglect of suit and service, after a personal summons, or for executing a feoffment, leasing without licence, committing treason or felony, or the like, the precept should recite the act occasioning the forfeiture, and that the homage have upon their oaths presented that he the said — (the tenant) by such, &c., hath forfeited all and singular his customary or copyhold lands lying within and holden of the said manor unto the lord of the same manor; and then conclude, "It is therefore commanded and ordered that you, *W. Y.*, do seize, and you are hereby authorized and required to seize, the said lands and hereditaments, with the appurtenances, so forfeited as aforesaid, into the hands of the lord of the said manor, and you are also commanded and ordered to answer to the lord the profits and esplees of the premises, and to make your return to this precept at the next general court to be holden for the said manor. Given, &c."

And the like return is to be made and indorsed by the bailiff as on a seizure *quousque*, omitting the words "until, &c."

[D.]

(Precept to summon the Tenant, in Complaint of Customary Dower.)

The manor of — }
in the county of — } To *W. Y.*, bailiff of the said manor, greeting.

Because *C. B.*, of &c., who (as she alleges) was formerly the wife, and is now the widow of *A. B.*, deceased, late one of the customary or copyhold tenants of the said manor, complains against *E. D.*, gentleman, of a plea of land, to wit, of the third part of — messuages, &c., with the appurtenances, situate lying and being in the parish of —, in the county of —, within the said manor and the jurisdiction of this court, of which said premises the said *A. B.* died seized, and to a third part whereof the said *C. B.* (as she alleges) is intitled for her life as her freebench, according to the custom of the said manor; therefore I command you that, according to the custom of the said manor, you summon the said *E. D.*, by good summoners, to be and appear at the next court baron or customary court to be holden for the said manor, on —, the — day of —, at the usual and accustomed place, being, &c., to answer to the said plaint; and have you there the summoners and this precept. Given at the court baron or customary court of the said manor, under my hand and seal, this — day of —, in the year, &c.

J. S., steward of the said manor.

[E.]

(Plaint in Customary Dower, and Prayer of Process.)

At this court comes *C. B.*, of, &c., formerly the wife, and now the widow of *A. B.*, deceased, late one of the customary or copyhold tenants of this manor, in her own proper person, and complains against *E. D.*, gentleman, of a plea of land, to wit, of the third part of — messuages, — barns, — stables, — cow-houses, — orchards, — gardens, — acres of land, — acres of meadow and — acres of pasture, with the appurtenances, situate, lying and being in the parish of —, in the county of —, within this manor and the jurisdiction of this court, of which said premises the said *A. B.* died seized, holding the same by copy of court roll, at the will of the lord, according to the custom of this manor; and to a third part of which said premises the said *C. B.* is intitled for her life as her freebench, according to the custom of this manor: And the said *C. B.* makes protestation to prosecute her plaint in this court, in the form and nature of a writ of our said lord the king, of dower at common law, according to the custom of this manor, and finds pledges to prosecute her said plaint in this court, to wit, *John Doe* and *Richard Roe*; and the said *C. B.* prays process thereupon to be made to her against the said *E. D.*, according to the custom of this manor.

Therefore, according to the custom of this manor, a precept is awarded and issued to *W. Y.*, bailiff of this manor, that, &c. [Ante, p. 829.]

[F.]

(Affeerors' Oath.)

"You and each of you shall well and truly affeer and affirm the several amercements here made, and now to you remembered; you shall spare no one through fear, favour or affection, nor enhance any one from hatred or malice, but shall impartially act herein: So help you God."

[G.]

(Warrant to the bailiff to assign timber for repairs.)

The manor of — }
in the county of — } *J. S.*, steward of the said manor, to *W. Y.*, bailiff.

Take notice that *A. B.*, a copyhold tenant of the said manor, is allowed three oak trees for and towards the repairing of his tenement lying within and holden of the said manor, now in the occupation of —, but for no other purpose, and the same trees to be had and taken by your assignment from and out of, &c. Given under my hand this — day of, &c.

J. S.

PRECEDENTS OF DEPUTATIONS, POWERS OF ATTORNEY, COPYHOLD ASSURANCES, &c.

(Appointment to the Stewardship of a Customary Court Baron (a); with the powers created by the Act of 4 & 5 Vict. c. 35) (b).

Know all men by these presents, that I, A. Z., lord of the manor of — in the county of —, have made, ordained, constituted and appointed, and do hereby make, ordain, constitute and appoint J. S. of &c., to be steward of the aforesaid manor of —, and the members thereof, with full power and authority from time to time to hold courts baron and customary courts for the same manor and its members, and to do all acts usual and customary to be done by stewards in relation thereunto, and also all acts authorised to be done by stewards either within or out of the manor, and without holding a court, by and under the provisions of the act of parliament of 4 & 5 Vict. c. 35, (sections 87 and 88,) accounting to me from time to time for such fines, heriots, reliefs, forfeitures, amercements and other manorial profits, as shall be received by him or by his deputy or deputies; and I do hereby more especially authorise and empower the said J. S., from time to time, as there may be occasion, to make any voluntary grants of all or any customary or copyhold lands within the said manor, and to give and execute to the tenants thereof any licences to demise or otherwise as he the said J. S. shall deem expedient, and either in or out of court, and either in or out of the manor, as fully as I myself could or might do (c): and also to appoint any deputy steward or deputy stewards (d) of or for the said manor of — and its members, with full power to hold all or any such courts as aforesaid, and to do such other act or acts as he the said J. S. could or might do as chief steward of the same manor; and also to depute any person or persons to act under him as sub-deputy steward or stewards of the said manor as occasion may require (e); but such appointment of a deputy or sub-deputy steward for the purpose of any act out of court to be made by deed only and not by parol. And I do hereby ratify and confirm all and whatsoever the said J. S., or such his deputy or deputies, sub-deputy or sub-deputies shall lawfully do or cause to be done by virtue of these presents, hereby declaring that this appointment shall continue in force during my will and pleasure only. In witness whereof I have hereunto set my hand and seal, this — day of —, in the year of our Lord —.

Sealed, &c.

A. Z. (L. S.)

(a) Ante, pt. 1, p. 110, et seq.

(b) Ante, pt. 1, pp. 102, 392. And see extract from the act, post.

(c) Ante, pt. 1, pp. 114, 115, 458.

(d) Ante, pt. 1, p. 119, et seq.

(e) Ante, pt. 1, p. 120.

(A general appointment of an under steward).

Know all men by these presents, that I, *J. S.*, steward of the manor of —, in the county of —, by virtue of the power or authority to me given in this behalf by *A. Z.*, lord of the said manor, have made, ordained, constituted and appointed, and by these presents do make, ordain, constitute and appoint *A. B.* of &c., to be my deputy steward of the aforesaid manor of —, and the members thereof, with full power and authority from time to time to hold courts baron and customary courts for the same manor and its members, and to do all such acts in the performance and execution of the duties of the said office as I myself could or might do being personally present; and with liberty and authority to depute any person or persons to act under him as sub-deputy steward or stewards of the said manor, as occasion may require, he the said *A. B.* accounting to me from time to time for such fines, heriots, reliefs, amercements, and profits of court, and all fees and perquisites whatsoever arising from the said office, upon being required thereunto; and I do hereby declare that this appointment shall continue in force during my will and pleasure. In witness, &c.

Sealed, &c.

J. S. (L. s.)*(Deputation to take a surrender out of court from C. D. and his wife of lands belonging to the wife.)*

Know all men by these presents, that I, *J. S.*, steward of the manor of —, in the county of —, have made, ordained, constituted and appointed, and by these presents do make, ordain, constitute and appoint *A. B.* of &c., my deputy steward of and for the said manor, for the special purpose and turn only of taking and accepting a certain surrender already prepared, and bearing even date herewith, from *C. H.* of &c., and *D.* his wife, by the rod, according to the custom of the said manor, of All &c., and to which same premises the said *D. H.* was admitted at a general court held for the said manor, on the — day of —; and of all the estate and interest of the said *C. H.* and *D.* his wife, respectively, therein or thereto, to the use of *I. L.* of &c., his heirs and assigns for ever, according to the custom of the said manor, pursuant to a contract by the said *C. H.* and *D.* his wife for the sale of the same premises to the said *I. L.* And I do hereby authorize and empower the said *A. B.*, as my deputy steward, to examine the said *D. H.* separately and apart from her said husband as to her free and voluntary consent to the said surrender, and generally to do and perform all acts, matters and things for the purposes aforesaid as fully and effectually to all intents and purposes as I myself could or might do being personally present; the said *A. B.* duly accounting to me for such fees, sum and sums of money as shall be received by him for my use by virtue of this appointment, upon being thereunto required. In witness, &c.

Sealed, &c.

J. S. (L. s.)

(License to demise.)

The manor of — } Be it remembered that on the — day of —,
 in the county of — } in the year of our Lord —, A. Z., lord of the
 said manor, by J. S. the steward thereof, did, out of court, give and grant
 to C. D., one of the customary tenants of the said manor, full license,
 power and authority to demise and lease to any person or persons, willing
 to take the same as lessee or lessees to the said C. D., but not by way of
 mortgage, his or their executors, administrators and assigns, All &c., with
 the appurtenances, (to which same premises the said C. D. was admitted
 tenant at a court held for the said manor on the — day of —,) to
 hold for any term or number of years, not exceeding — years, to be
 computed from the — day of — last; saving always to the lord of the
 said manor, and to all and every lord and lady, lords and ladies of the
 said manor for the time being, all and all manner of fines, heriots, rents,
 customs and services therefore due and of right accustomed. And for
 this licence the said C. D. hath paid for a fine the sum of £— — —,
 [when there is a settled fine, add, “according to the custom of the said
 manor”].

J. S. steward.

(Licence to fell timber.)

The manor of — } Be it remembered that on the — day of,
 in the county of — } &c., A. Z., lord of the said manor, by J. S., the
 steward thereof, did, out of court, give and grant to C. D., one of the cus-
 tomary tenants of the said manor, full licence to fell, within — calendar
 months from the day above mentioned, — oak trees, standing and grow-
 ing in a certain close called —, part of the copyhold tenements of the
 said C. D. within the said manor, and already marked for that purpose
 by the woodward of the said A. Z.; and the same to sell and dispose of,
 or convert to his own use, at his free will and pleasure, without rendering
 any account for the same [or, the same to be used and employed by the
 said C. D. in the repairs and improvement of his aforesaid tenement, (*as
 the case may be*)]. And for this licence the said C. D. hath paid by way
 of fine the sum of £— — —.

J. S. steward.

*(Letter of attorney to surrender to a purchaser, the purchase-money having
 been previously paid.)*

Know all men by these presents, that I, A. B. of &c., one of the cus-
 tomary or copyhold tenants of the manor of —, in the county of —,
 have made, ordained, constituted, and appointed, and by these presents do
 make, ordain, constitute, and appoint C. D. of &c., my true and lawful at-
 torney, for me and in my name to appear at the next or any subsequent court
 baron or customary court to be holden for the said manor, or before the
 lord or lords, lady or ladies of the said manor, or the lawfully constituted
 steward or deputy steward, out of court, and either in or out of the manor,

and to surrender into the hands of the same lord or lady, lords or ladies, and either in his, her or their proper person or persons, or by the hands and acceptance of such steward or deputy steward by the rod, according to the custom of the said manor, All &c., with the appurtenances, (and to which same premises I was admitted tenant at a court held for the said manor on the — day of —;) and the reversion and reversions, remainder and remainders thereof; and all my estate and interest therein or thereto, to the use of *E. F.* of &c., his heirs and assigns for ever, according to the custom of the said manor. And further, for me, the said *A. B.*, and in my name, to do and execute all and every such acts, matters and things, as shall be needful or expedient for making such surrender as aforesaid; and for procuring the said *E. F.*, his heirs or assigns, to be admitted tenant to the said copyhold premises, and as fully and effectually to all intents and purposes as I myself could or might do, being personally present, hereby agreeing to ratify and confirm all and whatsoever the said *C. D.* shall lawfully do, or cause to be done, by virtue of these presents. In witness, &c.

Sealed, &c.

A. B. (L. s.)

(General power of attorney to sell copyholds, and surrender to a purchaser.)

Know all men by these presents, that I, *A. B.* of &c., one of the customary or copyhold tenants of the manor of &c., have made, ordained, constituted and appointed, and by these presents do make, ordain, constitute and appoint *C. D.* of &c., and *E. F.* of &c., jointly and severally, and the survivor of them, my true and lawful attornies and attorney, agents and agent, for me, in my name and on my behalf, to sell and dispose of, either by public auction or private contract, and for the best price or prices that can in their or his judgment be had or gotten for the same, all or any part of the customary or copyhold hereditaments hereinafter described respectively lying within and holden of the manor of —, in the county of —, and the customary fee-simple and inheritance thereof, that is to say, All &c., with their appurtenances, (to which same premises I was admitted to hold to me and my heirs for ever, according to the custom of the said manor, at a general court held the — day of —;) and also to make and enter into any contract or contracts in writing with any person or persons whomsoever in relation to such sale or sales respectively, as to my said attornies or attorney, agents or agent, shall seem meet; and further, for me, in my name and on my behalf, either at some general or special court baron or customary court to be holden for the manor of — aforesaid, or out of court at any time or times after such sale or sales respectively, to surrender into the hands of the lord or lady, lords or ladies of the said manor for the time being, and according to the custom of the same manor, the said customary or copyhold — hereditaments and premises so to be sold, or any of them; and the reversion and reversions, remainder and remainders thereof; and all my estate and interest therein or thereto, to the use of the person or persons purchasing the same

premises respectively as aforesaid, and of his, her or their heirs and assigns for ever, or as he, she or they shall direct or require, and according to the custom of the manor of — aforesaid: and moreover for me and in my name, and as my act and deed, to sign, seal, execute and deliver any deed or deeds to be prepared by and on the part of all or any such purchasers as aforesaid, pursuant to such contract or contracts for sale respectively, containing all reasonable and proper covenants on the part of me the said *A. B.*, my heirs, executors and administrators, for the estate, title, possession and further assurance of the hereditaments and premises respectively so to be sold as aforesaid; and for the production of any deeds, instruments or writings, constituting my title to the same respective premises, which, according to the usage and practice in the like cases, are to remain in my custody or power; and for the delivery of attested or other copies thereof from time to time thereafter, at the request, costs and charges of such purchaser or purchasers respectively, his, her or their appointees, heirs or assigns; and generally for me and in my behalf to do, perform and execute all or any such other acts, deeds, assurances, matters and things as shall be necessary or expedient in and about the premises, and as fully and effectually to all intents and purposes as I myself could or might do, being personally present. And I do hereby expressly declare and agree, that the receipt and receipts which shall be given by my said attornies or agents, or either of them, for all or any part of the monies to arise from any such sale or sales as aforesaid, shall be a good and sufficient discharge and good and sufficient discharges to the purchaser or purchasers, or other person or persons paying the same monies respectively, for all or so much and such part thereof as shall be in such receipt or receipts respectively expressed or acknowledged to be received; and that such purchaser or purchasers, or other person or persons, shall not afterwards be bound to see to the application of the same monies, nor be responsible for the loss, misapplication, or non-application thereof, or any part thereof. And I direct that the same monies, when so received, shall be paid forthwith into the hands of Messrs. — —, bankers, in —, to my account and for my use, or to such other person or persons, and in such other manner as I may from time to time require by any note or writing under my hand. Provided nevertheless, and I do hereby fully authorize my said attornies or agents respectively to retain and deduct out of the said trust monies all costs, charges and expenses, which they respectively shall sustain or incur in the execution of the power or trust hereby reposed in them. And I declare and direct that they shall not be responsible the one for the other of them, nor for any loss which may happen by depositing the trust monies aforesaid with any person or persons whomsoever for safe custody or otherwise without their respective wilful neglect or default. And I do hereby agree to ratify and confirm all and whatsoever my said attornies or attorney, agents or agent, shall lawfully do or cause to be done by virtue of these presents. In witness, &c.

Sealed, &c.

A. B. (L. s.)

(Power of attorney to procure admittance in tail, and afterwards to surrender the estate, and do all necessary acts in order to acquire the fee-simple.)

Know all men by these presents, that I, *A. B.* of &c., have made, ordained, constituted and appointed, and by these presents do make, ordain, constitute and appoint *C. D.* of &c., my true and lawful attorney, for me in my name and on my behalf, to appear at the next or some subsequent general or at a special court baron or customary court to be holden for the manor of —, in the county of —, or before the lord or lady, lords or ladies of the same manor for the time being, or the lawfully constituted steward or deputy steward, out of court (*f*); and to pray and receive and take admittance of and from such lord or lady, lords or ladies, steward or deputy steward by the rod, and according to the custom of the aforesaid manor, to All &c., with the appurtenances, to the use of me the said *A. B.*, and the heirs of my body lawfully issuing, according to the limitations expressed and declared in and by &c., [here briefly refer to the will or surrender creating the estate tail]. And I do hereby further authorize and empower and direct the said *C. D.*, for me, in my name and on my behalf, immediately after such admittance as aforesaid, to surrender into the hands of the lord or lady, lords or ladies, of the manor of — aforesaid for the time being, either in his, her or their proper person or persons, or by the hands and acceptance of such steward or deputy steward by the rod, and according to the custom of the same manor, All and singular the said customary or copyhold — — hereditaments and premises, with their appurtenances; and the reversion and reversions, remainder and remainders thereof; and all the estate and interest of me the said *A. B.* therein or thereto, from and after such admittance as aforesaid, to the use of me the said *A. B.*, my heirs and assigns for ever; and generally to do, perform and execute or join and concur with all or any other person or persons whomsoever in anywise concerned therein, in doing, performing and executing all such other acts, matters and things as according to the custom of the manor of — aforesaid shall be necessary or expedient for barring the aforesaid estate tail and all other estates tail, and all remainders and reversions thereupon expectant or depending, of and concerning the said hereditaments and premises; and for surrendering, limiting and assuring the same premises, with their appurtenances, to the use of me the said *A. B.*, my heirs and assigns for ever, according to the custom of the said manor, and for procuring admittance under and by virtue of such last mentioned surrender, and as fully and effectually to all intents and purposes as I myself might or could do being personally present. And I do hereby agree to ratify and confirm all and whatsoever my said attorney shall lawfully do or cause to be done in the premises by virtue of these presents. In witness, &c.

Sealed, &c.

A. B. (L. s.)

(*f*) See reference to sect. 88 of 4 & 5 Vic. c. 35, ante, pt. 1, p. 102; et vide the act, post.

(Surrender out of court by A. B. to C. D. a purchaser in fee) (g).

The manor of — } Be it remembered that on the — day of —, in
in the county of — } the year of our Lord —, A. B. of &c., one of the
customary tenants of the said manor, came before J. S. steward of the said
manor, and for carrying into effect a contract made and entered into by the
said A. B. with C. D. of &c., for the sale to him of the copyhold here-
ditaments hereinafter described and the customary fee-simple and inher-
itance thereof, and in consideration of the sum of £— of lawful money of
the united kingdom of Great Britain and Ireland current in England,
unto the said A. B. in hand paid by the said C. D. at the time of making
this surrender, did out of court surrender into the hands of the lord of the
said manor by the hands and acceptance of the said steward by the rod,
according to the custom of the said manor, All &c., with the appurtenances
to the same premises belonging or in anywise appertaining, (to which said
hereditaments and premises the said A. B. was admitted at a general
court holden for the said manor on the — day of —;) and the rever-
sion and reversions, remainder and remainders, rents, issues and profits
thereof; and all the estate, right, title, interest, benefit, power, claim and
demand whatsoever of the said A. B. in, to or out of the said heredita-
ments and premises and every part thereof, *to the use* of the said C. D.,
his heirs and assigns for ever, according to the custom of the said manor.

A. B.

Taken and accepted the said —
day of —, by me,

J. S., steward of the said manor.

*(Surrender out of court by A. B. and his wife, pursuant to a covenant
in their marriage settlement, to the use of the trustees of the settle-
ment) (h).*

The manor of — } Whereas by an indenture bearing date &c., and
in the county of — } made between A. B. of &c., of the first part, C. D.
of &c., spinster, of the second part, and E. F. of &c., and G. H. of
&c., of the third part, Reciting that a marriage had been agreed upon and
was intended shortly thereafter to be had and solemnized between the said
A. B. and C. D.; And reciting that the said A. B. was seized of the free-
hold hereditaments thereinafter described, and intended to be thereby
granted and released, for an estate of inheritance in fee simple in posses-
sion; and that the said C. D. was seized of the copyhold hereditaments
thereinafter described, and covenanted to be surrendered, for an estate of
inheritance in fee simple in possession, according to the custom of the said
manor: And after also reciting that upon the treaty for the said marriage
it was proposed and agreed that the said freehold hereditaments should be
conveyed and assured to, for and upon the uses, trusts, intents and purposes

(g) See presentment of and admittance under this surrender, ante, 782.

(h) Ib. ante, 786,

thereinafter limited, expressed, declared and contained, of and concerning the same; and that the said copyhold hereditaments should be surrendered to the use of the said *E. F.* and *G. H.* and their heirs, upon and for the trusts, intents and purposes, and in manner mentioned in the covenant or agreement in that behalf thereinafter contained,—It was witnessed, that in consideration of the said then intended marriage, and for the nominal consideration therein expressed, the said *A. B.* did grant, bargain, sell, alien and release unto the said *E. F.* and *G. H.* and to their heirs and assigns, All and singular the freehold — — and hereditaments therein particularly described, with their appurtenances, to hold the same unto the said *E. F.* and *G. H.*, their heirs and assigns, to, for and upon the uses, trusts, intents and purposes, and under and subject to the powers, provisos, declarations and agreements in the said indenture of release and settlement limited, expressed, declared and contained of and concerning the same freehold hereditaments: and by the said indenture of release and settlement it was covenanted and agreed that the said *A. B.* and *C. D.*, his then intended wife, should and would, either before or with all convenient speed after the solemnization of the said then intended marriage, duly surrender, according to the custom of the said manor, the customary or copyhold hereditaments therein and hereinafter described, with their appurtenances, to the use of the said *E. F.* and *G. H.*, their heirs and assigns for ever, upon and for such trusts, intents and purposes as would best and nearest correspond with the uses, trusts and limitations thereinbefore expressed, declared and contained of and concerning the said freehold hereditaments thereinbefore conveyed and assured. And whereas a marriage was duly had and solemnized between the said *A. B.* and *C. D.* soon after the date and execution of the hereinbefore in part recited indenture of release and settlement,—

Now be it remembered that on the — day of — the said *A. B.* and *C.* his wife came before *J. S.*, esquire, steward of the said manor, and in pursuance of the said covenant or agreement in this behalf mentioned and contained in the said indenture of release and settlement, and the said *C. B.* being first examined by the steward separately and apart from her said husband, and freely and voluntarily consenting thereunto, did, out of court, surrender into the hands of the lord of the said manor, by the hands and acceptance of the said steward, by the rod, according to the custom of the said manor, All &c., with the appurtenances to the same premises belonging or in anywise appertaining, (and to which same hereditaments and premises the said *C. B.* (then *C. D.*) was admitted at a court held for the said manor on the — day of —;) and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, benefit, power, claim and demand whatsoever of the said *A. B.* and *C.* his wife respectively in, to or out of the same hereditaments and premises and every or any part thereof, to the use of the said *E. F.* and *G. H.*, their heirs and assigns for ever, according to the custom of the said manor, but nevertheless upon and for the trusts, intents and purposes expressed and declared or referred unto of and concerning the

same customary or copyhold hereditaments and premises in and by the said in part recited indenture of release and settlement.

A. B.

C. B.

Taken and accepted this — day of —,
(the said *C. B.* being first by me examined separately and apart from her said husband, and freely and voluntarily consenting thereto,) by me,

J. S., steward of the said manor.

(Conditional surrender out of court of copyhold lands of inheritance into the hands of a deputy steward.)

The manor of — } Be it remembered that on the — day of &c.,
in the county of — } *E. F.* of &c., one of the customary or copyhold tenants of the said manor, came before *C. D.*, gentleman, deputy steward of *J. S.* esquire, chief steward of the said manor, and in consideration of the sum of £— — — of lawful money &c., to the said *E. F.* in hand well and truly paid by *G. H.* of &c., did out of court surrender into the hands of the lord of the said manor, by the hands and acceptance of the said deputy steward, by the rod, according to the custom of the said manor, All &c., with the appurtenances, (and to which same premises the said *E. F.* was admitted at a general court held for the aforesaid manor on the — day of —;) and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, benefit, property, power, claim and demand whatsoever of the said *E. F.* in, to, or out of the same premises and every part thereof, *To the use* of the said *G. H.*, his heirs and assigns for ever, according to the custom of the said manor, subject nevertheless to and upon this express condition, that if the said *E. F.*, his heirs, executors or administrators, do and shall well and truly pay or cause to be paid unto the said *G. H.*, his executors, administrators or assigns, the sum of £— — —, of lawful money aforesaid, on the — day of — next, together with interest for the same after the rate of *5l. per cent. per annum*, computed from the date of this surrender, clear of all taxes and deductions whatsoever, (and being the same principal and interest monies as are mentioned to be secured to the said *G. H.* by the covenant (*h*) of the said *E. F.*, contained in a certain indenture bearing even date herewith,) then this surrender is to be void and of no effect, otherwise it is to remain in full force and virtue.

E. F.

Taken &c., by me,

C. D., deputy steward.

(*h*) A bond has been disused since the act of 1 W. 4, c. 47, which placed a cove-

nant on the same footing as regards devisees of land.

(Surrender out of court of copyholds of inheritance into the hands of two tenants, to the use of a trustee, by way of security.)

The manor of — } Be it remembered that on the — day of &c.,
in the county of — } *A. B.* of &c., one of the customary or copyhold
tenants of the said manor, came before us, *C. D.* of &c., and *E. F.* of
&c., two other customary or copyhold tenants of the said manor, at the
house of —, situate within the same manor, and, in consideration of the
sum of £— — of lawful money &c., to the said *A. B.* in hand well
and truly paid by *G. H.* of &c., and at the request and by the direction
fo the said *G. H.*, testified by his subscribing his name at the foot of this
surrender, did out of court surrender into the hands of the lord of the said
manor, by the hands and acceptance of the said *C. D.* and *E. F.*, by the
rod, according to the custom of the same manor, All &c., with the appur-
tenances, (to which same premises the said *A. B.* was admitted at a general
court held for the said manor on the — day of —;) and the reversion,
&c., and all the estate, &c., to the use of *J. K.* of &c., his heirs and as-
signs for ever, according to the custom of the said manor, upon the trusts
nevertheless hereinafter expressed, that is to say, upon trust that the said
J. K., his heirs or assigns, in case the said *A. B.*, his heirs, executors or
administrators, shall pay or cause to be paid unto the said *G. H.*, his execu-
tors, administrators or assigns, the full sum of £— — of lawful money
aforesaid, with lawful interest for the same, clear of all taxes and deduc-
tions, on the — day of —, according to the purport and true meaning
of the covenant of the said *A. B.* contained in a certain indenture bearing
even date herewith, do and shall at any time thereafter, upon the request
and at the costs and charges of him the said *A. B.*, his heirs or assigns, re-
surrender all and singular the aforesaid customary or copyhold heredita-
ments and premises, with the appurtenances, to the use of the said *A. B.*,
his heirs and assigns for ever, according to the custom of the said manor
of —, and in the mean time and until the said — day of —, and
also thenceforth and until the said premises shall be re-surrendered in the
manner hereinbefore mentioned (the said principal and interest monies be-
ing so well and truly paid as aforesaid), do and shall stand seized or pos-
sessed of the said customary or copyhold hereditaments and premises in
trust for the said *A. B.*, his heirs and assigns. But in case default shall
be made in payment of the same principal and interest monies, or any part
thereof respectively, in manner aforesaid, then do and shall stand seized or
possessed of the said hereditaments and premises, with their appurtenances,
upon trust forthwith, or at any time after such default, upon being required
thereunto by the said *G. H.*, his executors, administrators or assigns, to
make sale and absolutely dispose of the said customary or copyhold here-
ditaments and premises, or any part thereof, either by public auction or
private contract, and together or in parcels, for the best price or prices that
in the judgment of the said *J. K.*, his heirs or assigns, can or may be
gotten for the same, and to surrender the premises so to be sold unto the
purchaser or purchasers thereof, his, her or their heirs and assigns for ever,

according to the custom of the said manor, or as he, she or they shall direct or require; and upon further trust, by, with and out of the monies to arise from such sale or sales, and of the rents and profits of the said hereditaments and premises from and after any such default, and in the mean time and until such sale or sales, in the first place to pay and discharge all such costs, charges and expenses as the said *J. K.*, his heirs or assigns shall pay or sustain in procuring admittance by virtue of or under this surrender, or otherwise in the execution of the trusts hereby in him and them reposed, and in the next place, out of the trust monies aforesaid, to pay, satisfy and discharge the said principal and interest monies intended to be secured to the said *G. H.*, his executors, administrators and assigns, in and by this surrender and the aforesaid covenant of the said *A. B.*, or so much and such part thereof as shall then remain due and owing, and to pay the residue and surplus of the trust monies aforesaid unto the said *A. B.*, his executors, administrators or assigns; and it is hereby agreed and declared that the receipt and receipts of the said *J. K.*, his heirs or assigns, shall be a good and sufficient discharge and good and sufficient discharges to the purchaser or purchasers of the aforesaid hereditaments and premises for all or such part of his, her or their purchase monies as shall be therein acknowledged or expressed to be received, and that such purchaser or purchasers, his, her or their heirs, executors, administrators or assigns shall not be bound to see to the application of such purchase monies, nor be responsible for the loss, misapplication or non-application thereof, or any part thereof; and also that the said *J. K.*, his heirs or assigns, shall not be chargeable with nor accountable for any monies other than such as he or they shall actually receive by virtue of the trusts hereby in him and them reposed, nor with nor for any loss or damage which may happen by placing the trust monies aforesaid in any bank or banker's hands, or elsewhere for safe custody, nor anywise in or about the execution of the aforesaid trusts, without his or their wilful neglect or default.

A. B.

G. H.

Taken, &c., by us.

C. D. } Customary or copyhold tenants
E. F. } of the aforesaid manor.

(Surrender out of court by A. B., holding a grant to him and his heirs for three lives, to a purchaser.)

The manor of — } Be it remembered that on the — day of —,
 in the county of — } in the — year of the reign &c., and in the year
 of our Lord —, *A. B.* of &c., who, at a court holden for the said
 manor on the — day of —, was admitted to the customary or copy-
 hold hereditaments hereinafter described, to hold to him the said *A. B.*
 and his heirs for the lives of *C. D.*, *E. F.* and *G. H.*, and the life of the
 longest liver of them, came before *J. S.*, steward of the said manor, and in
 consideration of the sum of £— — of lawful money &c., to him the
 said *A. B.* in hand well and truly paid by *I. K.* of &c., did out of court

surrender into the hands of the lord of the said manor, by the hands and acceptance of the said steward, by the rod, according to the custom of the said manor, All &c., with the appurtenances to the same premises belonging or appertaining; and all the estate, right, title, interest, benefit, power, claim and demand whatsoever of the said *A. B.*, in, to, or out of the same premises and every part thereof; to the use of the said *I. K.* and his heirs, for and during the lives of the said *C. D.*, *E. F.* and *G. H.*, and the life of the longest liver of them, according to the custom of the said manor.

A. B.

Taken and accepted, the day
and year first above writ-
ten, by me,

J. S., steward of the said manor.

(Warrant to enter satisfaction on a conditional surrender) (i).

The manor of — } I, *C. D.* of &c., do hereby acknowledge to have
in the county of — } received of and from *A. B.* of &c., all principal and
interest monies due and owing to me upon or by virtue of a conditional
surrender made and executed by the said *A. B.*, of certain customary or
copyhold hereditaments lying within and holden of the said manor, and
bearing date the — day of —; and I do hereby direct and require the
steward of the said manor to enter satisfaction thereof on the court rolls of
the same manor, and for so doing this shall be his sufficient warrant and
authority.

C. D.

(Surrender out of court by tenant in tail in remainder, with the consent of the tenant for life, (the protector under the provisions of 3rd and 4th W. 4. c. 74,) for the purpose of acquiring a reversionary estate in fee simple) (k).

The manor of — } Whereas under and by virtue of the limitations
in the county of — } contained in [state whether a surrender by way of
settlement or a will] the customary or copyhold hereditaments hereinafter
described were and do now stand limited to the use of *A. B.* of &c., for the
term of his life, with remainder to *C. D.* of &c., and the heirs of his body
lawfully issuing, with several remainders over; and at a court held for the
said manor on the — day of — the said *A. B.* was admitted tenant of

(i) Sometimes this warrant has been put upon the stamp required for a power of attorney; but query whether the act of 55 Geo. 3, c. 184, has imposed any duty on such an instrument. See form of acknowledgment of satisfaction in court, ante, 789.

(k) This form assumes that *C. D.* was in the seizin, under the rule that the admittance of the tenant for life is the admittance of the persons intitled in remain-

der. If by the custom remainder-men are compellable to be admitted, then add a recital, that at a court held &c., the said *C. D.* was duly admitted to the same hereditaments, to hold to him and the heirs of his body in remainder expectant and to take effect in possession on the decease of the said *A. B.*, according to the true intent and meaning of the said [surrender or will].

the same hereditaments for the term of his life, according to the form and effect of the said [state whether surrender or will.]

Now be it remembered that on the — day of —, in the year of our Lord —, the said *C. D.* came before *W. B.*, deputy steward for that purpose and turn only of *J. S.*, chief steward of the said manor, and for the purpose of barring and extinguishing the said estate tail, to which he the said *C. D.* is so intitled as aforesaid, of and in the said hereditaments hereinafter described, and all remainders and reversions expectant thereupon, and of vesting the same hereditaments in the said *C. D.* and his heirs absolutely in remainder from and after the decease of the said *A. B.*, according to the custom of the said manor; and with the consent of the said *A. B.*, signified by his signature to this memorandum of surrender, in compliance with the direction in that behalf contained in an act of parliament passed in the 4th year of the reign of his late Majesty King William the Fourth, for the abolition of fines and recoveries and for the substitution of more simple modes of assurance, did out of court surrender into the hands of the lord of the said manor, by the hands and acceptance of the said deputy steward, by the rod, according to the custom of the said manor, All &c., with the appurtenances to the same premises belonging or appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, benefit, power, claim and demand whatsoever of the said *C. D.*, in, to, or out of the same premises, and every part thereof, to the use of him the said *C. D.*, his heirs and assigns for ever, in remainder expectant and to take effect in possession on the decease of the said *A. B.* and according to the custom of the said manor (*l*).

C. D.

A. B.

Taken and accepted the —
day of —, by me,

W. B., deputy steward.

(Surrender out of court by tenant in tail in remainder, in order to acquire a base fee) (m).

The manor of — } Whereas under and by virtue of the limitations
in the county of — } contained in [state whether a surrender by way of
settlement or a will] the customary or copyhold — — and hereditaments hereinafter described were and do now stand limited to the use of *A. B.* of &c., for the term of his life, with remainder to *C. D.* of &c., and the heirs male of his body lawfully issuing, with several remainders over; and at a court held for the said manor on the — day of — the said *A. B.* was admitted tenant of the same hereditaments for the term of his life according to the form and effect of the said [state whether a surrender or will] (*n*).

(*l*) See presentment of and admittance under this surrender, ante, 778.

(*m*) See presentment of and admittance under this surrender, ante, 779.

(*n*) The author has assumed that the admittance of *C. D.* to the estate tail in remainder is rendered unnecessary, by the rule that the admittance of the particular.

Now be it remembered that on the — day of —, in the year of our Lord —, the said *C. D.* came before *J. S.*, steward of the said manor, and for the purpose of acquiring a base customary fee in the said hereditaments, by virtue and in pursuance of the provisions contained in an act of parliament passed in the 4th year of the reign of his late Majesty King William the Fourth, for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance, did out of court surrender into the hands of the lord of the said manor, by the hands and acceptance of the said steward by the rod, according to the custom of the said manor, All &c., with the appurtenances to the same premises belonging or appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, benefit, power, claim and demand whatsoever of the said *C. D.*, in, to, or out of the same premises and every part thereof, to the use of him the said *C. D.*, his heirs and assigns for ever, in remainder expectant and to take effect in possession on the decease of the said *A. B.*, and according to the custom of the said manor.

C. D.

Taken and accepted the —
day of —, by me,

J. S., steward of the said manor.

*(Surrender out of court by a feme covert tenant in tail and her husband,
in order to acquire an absolute customary fee) (o).*

The manor of — } Whereas *A. B.*, late of &c., deceased, one of the
in the county of — } customary or copyhold tenants of the said manor,
in and by his last will and testament in writing, bearing date &c., gave
and devised all his copyhold estates lying within and holden of the said
manor unto his daughter *C. B.*, and the heirs of her body, with remainders
over, and afterwards departed this life without revoking or altering his said
will, which was duly proved by the executors therein named in the Prero-
gative Court of Canterbury on or about the — day of —. And whereas
the said *C. B.* was at a court holden for the said manor on the — day of —
admitted tenant of the customary or copyhold — — and hereditaments
hereinafter described, according to the form and effect of the devise so made
to her by her said late father as aforesaid. And whereas the said *C. B.* hath
lately intermarried with *E. F.* of &c.; Now be it remembered that on the
— day of — the said *E. F.* and *C.* his wife came before *J. S.*, steward
of the said manor, and for the purpose of barring and extinguishing the
said estate tail of and in the — — and hereditaments hereinafter
described, to which the said *C. F.* is so intitled as aforesaid, and all remain-
ders and reversions expectant thereupon, and of vesting the same heredita-
ments in the said *C. F.* and her heirs absolutely according to the custom
of the said manor, the said *C. F.* being first examined by the said steward

tenant is the admittance of all persons in-
titled in remainder. If *C. D.* were ad-
mitted to the remainder in fee, the fact

should be recited in the present surrender.

(o) See presentment of and admittance
under this surrender, ante, 780.

separately and apart from her said husband, and freely and voluntarily consenting thereto, did, by virtue and in pursuance of the provisions contained in an act of parliament passed in the 4th year of the reign of his late Majesty King William the Fourth for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance (*p*), surrender into the hands of the lord of the said manor, by the hands and acceptance of the said steward by the rod, according to the custom of the said manor, All &c., with the appurtenances to the same premises belonging or appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, benefit, power, claim and demand whatsoever of the said *E. F.* and *C.* his wife respectively, in, to, or out of the same premises and every part thereof, to the use of the said *C. F.*, her heirs and assigns for ever, according to the custom of the said manor.

*E. F.**C. F.*

Taken and accepted the — day of —, (the said *C. F.* being first by me examined separately and apart from her said husband, and freely and voluntarily consenting thereunto,) by me,

J. S., steward of the said manor.

(Surrender out of court by a feme covert equitably intitled to remainder in fee, and her husband, to a purchaser) (q).

The manor of — } Whereas *A. B.*, late of &c., deceased, in and by
in the county of — } his last will and testament in writing, bearing date
&c., gave and devised all his copyhold estates lying within and holden of
the said manor, by the description of &c., unto *C. D.* of &c., esquire, and
E. F. of &c., gentleman, and their heirs, in trust to pay the rents and
profits thereof unto *H. B.*, the wife of the said *A. B.*, (if she should happen
to survive him,) for the term of her natural life, for her separate use and
benefit in the manner therein mentioned, and from and after the decease of
the said *H. B.* to stand possessed of the said thereby devised copyhold
estates in trust for *J. B.*, spinster, the only child of the said *A. B.* and *H.*
his wife, her heirs and assigns for ever. And whereas the said *A. B.*
afterwards departed this life, leaving the said *H. B.* his wife him surviving,
and without having revoked or in anywise altered his said in part recited
will, which was proved by the executors therein named in the Prerogative
Court of Canterbury on the — day of —. And whereas at a court
holden for the said manor on the — day of — the said *C. D.* and *E.*
F. were admitted to the customary or copyhold hereditaments hereinafter
described, upon and for the trusts, intents and purposes expressed con-
cerning the same in the said will of the said *A. B.* deceased. And whereas

(*p*) The estate of the wife being an estate at law, a surrender is the only proper mode of barring the intail; see sec. 77 of the above act. Vide also ante, 748,

n. (*y*), 751.

(*q*) See presentment of this surrender, ante, 781.

the said *H. B.*, the widow of the said *A. B.*, is still living. And whereas the said *J. B.*, who some time since attained the age of twenty-one years, hath lately intermarried with and is now the wife of *L. M.* of &c.; Now be it remembered that on the — day of — the said *L. M.* and *J.* his wife came before *J. S.*, steward of the said manor, and for carrying into effect a contract or agreement for sale lately made and entered into by them with *N. O.* of &c., and in consideration of the sum of £— of lawful money of the united kingdom of Great Britain and Ireland current in England, unto the said *L. M.* and *J.* his wife in hand well and truly paid by the said *N. O.* at the time of making this surrender, and the said *J. M.* being first examined by the said steward separately and apart from her said husband and freely and voluntarily consenting thereto, did by virtue and in pursuance of the provisions contained in an act of parliament passed in the 4th year of the reign of his late Majesty King William the Fourth for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance (*r*), surrender into the hands of the lord of the said manor, by the hands and acceptance of the said steward by the rod, according to the custom of the said manor, All &c., with the appurtenances to the same premises belonging or appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, benefit, power, claim and demand whatsoever of the said *L. M.* and *J.* his wife respectively in, to or out of the same premises, and every part thereof, to the use of the said *N. O.*, his heirs and assigns for ever in remainder from and after the decease of the said *H. B.*, and according to the custom of the said manor.

L. M.

J. M.

Taken and accepted the — day of —, (the said *J. M.* being first examined by me separately and apart from her said husband, and freely and voluntarily consenting thereunto,) by me,

J. S., steward of the said manor.

(Deed of consent by the immediate tenant for life to a disposition by the first tenant in tail, for the purpose of acquiring an estate in remainder in fee simple) (s).

To all to whom these presents shall come, I *A. B.* of &c., send greeting: Whereas under and by virtue of the limitations contained in [state whether a surrender by way of settlement or a will] certain customary or copyhold — — and hereditaments, lying within and holden of the manor of &c., were and do now stand limited to the use of me the said *A. B.* and my assigns for the term of my life, and from and after my decease to the use of my eldest son *C. B.*, [or of *C. D.* of &c., as the case may be,] and the heirs of his body lawfully issuing, and at a court held for the said manor on the

(*r*) See sec. 90. Vide also ante, 748, n. (*y*).

(*s*) Ante, 802, where will be found a

form of the indorsement to be made on the deed by the lord, or the steward or his

deputy.

— day of — I the said *A. B.* was admitted tenant of the same hereditaments for the term of my life, according to the form and effect of the said surrender [or will]; and whereas the said *C. B.* [or *C. D.*] is desirous of acquiring an absolute estate of inheritance in fee simple in remainder, according to the custom of the manor of — aforesaid, expectant and to take effect in possession at my decease, of and in the said customary or copyhold — — hereditaments and premises, with their appurtenances, and hath applied to me to give my consent thereto, in compliance with the directions of an act of parliament passed in the 4th year of the reign of his late Majesty King William the Fourth, for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance: Now I the said *A. B.*, in my character of protector, under the provisions contained in the aforesaid act of parliament, of the limitations created by the surrender [or will] hereinbefore referred to, do hereby signify and declare my consent that the said *C. B.* [or *C. D.*] shall and may, by any such surrender or surrenders, deed or deeds of conveyance, acts and assurances, as may be by him, or his counsel or solicitor, deemed necessary or proper in that behalf, limit, convey and assure all and singular the aforesaid customary or copyhold — — hereditaments and premises, with their appurtenances, subject and without prejudice to my estate and interest therein for the term of my life, to the use of him the said *C. B.* [or *C. D.*] his heirs and assigns for ever, according to the custom of the said manor of —, or to, for and upon any such uses, trusts, intents and purposes as shall in and by any such surrender or surrenders, conveyances and assurances as last aforesaid be expressed, declared and contained of and concerning the same hereditaments and premises.

(Suggestion of another form.)

Now I &c. do hereby signify and declare my absolute and unqualified consent and approbation to any surrender or surrenders, or disposition or dispositions by deed or deeds, or other assurance or assurances, which shall be made or executed by the said *C. D.*, either on the day of the date of this deed-poll, or at any time or times hereafter, of all or any of the customary or copyhold — and hereditaments devised by &c., for barring and defeating the estate tail of him the said *C. D.* of and in the same hereditaments respectively, and all estates, powers, rights and interests to take effect after or in defeazance of such estate tail, and for limiting and assuring the same premises, subject and without prejudice to my estate for life and the estate in tail male in remainder to my first and other son and sons successively of and in the same hereditaments and premises, and all powers, privileges and exemptions annexed to such my estate for life, to the use of or in trust for the said *C. D.*, his heirs and assigns for ever, according to the custom of the said manor of —, or otherwise as he the said *C. D.* or his heirs should think fit.

thereinafter limited, expressed, declared and contained, of and concerning the same; and that the said copyhold hereditaments should be surrendered to the use of the said *E. F.* and *G. H.* and their heirs, upon and for the trusts, intents and purposes, and in manner mentioned in the covenant or agreement in that behalf thereinafter contained,—It was witnessed, that in consideration of the said then intended marriage, and for the nominal consideration therein expressed, the said *A. B.* did grant, bargain, sell, alien and release unto the said *E. F.* and *G. H.* and to their heirs and assigns, All and singular the freehold — — — and hereditaments therein particularly described, with their appurtenances, to hold the same unto the said *E. F.* and *G. H.*, their heirs and assigns, to, for and upon the uses, trusts, intents and purposes, and under and subject to the powers, provisos, declarations and agreements in the said indenture of release and settlement limited, expressed, declared and contained of and concerning the same freehold hereditaments: and by the said indenture of release and settlement it was covenanted and agreed that the said *A. B.* and *C. D.*, his then intended wife, should and would, either before or with all convenient speed after the solemnization of the said then intended marriage, duly surrender, according to the custom of the said manor, the customary or copyhold hereditaments therein and hereinafter described, with their appurtenances, to the use of the said *E. F.* and *G. H.*, their heirs and assigns for ever, upon and for such trusts, intents and purposes as would best and nearest correspond with the uses, trusts and limitations thereinbefore expressed, declared and contained of and concerning the said freehold hereditaments thereinbefore conveyed and assured. And whereas a marriage was duly had and solemnized between the said *A. B.* and *C. D.* soon after the date and execution of the hereinbefore in part recited indenture of release and settlement,—

Now be it remembered that on the — — day of — — the said *A. B.* and *C.* his wife came before *J. S.*, esquire, steward of the said manor, and in pursuance of the said covenant or agreement in this behalf mentioned and contained in the said indenture of release and settlement, and the said *C. B.* being first examined by the steward separately and apart from her said husband, and freely and voluntarily consenting thereunto, did, out of court, surrender into the hands of the lord of the said manor, by the hands and acceptance of the said steward, by the rod, according to the custom of the said manor, All &c., with the appurtenances to the same premises belonging or in anywise appertaining, (and to which same hereditaments and premises the said *C. B.* (then *C. D.*) was admitted at a court held for the said manor on the — — day of — —;) and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, benefit, power, claim and demand whatsoever of the said *A. B.* and *C.* his wife respectively in, to or out of the same hereditaments and premises and every or any part thereof, to the use of the said *E. F.* and *G. H.*, their heirs and assigns for ever, according to the custom of the said manor, but nevertheless upon and for the trusts, intents and purposes expressed and declared or referred unto of and concerning the

same customary or copyhold hereditaments and premises in and by the said in part recited indenture of release and settlement.

A. B.

C. B.

Taken and accepted this — day of —,
(the said *C. B.* being first by me examined separately and apart from her said husband, and freely and voluntarily consenting thereto,) by me,

J. S., steward of the said manor.

(Conditional surrender out of court of copyhold lands of inheritance, into the hands of a deputy steward.)

The manor of — } Be it remembered that on the — day of &c.,
in the county of — } *E. F.* of &c., one of the customary or copyhold tenants of the said manor, came before *C. D.*, gentleman, deputy steward of *J. S.* esquire, chief steward of the said manor, and in consideration of the sum of £— — of lawful money &c., to the said *E. F.* in hand well and truly paid by *G. H.* of &c., did out of court surrender into the hands of the lord of the said manor, by the hands and acceptance of the said deputy steward, by the rod, according to the custom of the said manor, All &c., with the appurtenances, (and to which same premises the said *E. F.* was admitted at a general court held for the aforesaid manor on the — day of —;) and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, benefit, property, power, claim and demand whatsoever of the said *E. F.* in, to, or out of the same premises and every part thereof, *To the use* of the said *G. H.*, his heirs and assigns for ever, according to the custom of the said manor, subject nevertheless to and upon this express condition, that if the said *E. F.*, his heirs, executors or administrators, do and shall well and truly pay or cause to be paid unto the said *G. H.*, his executors, administrators or assigns, the sum of £— —, of lawful money aforesaid, on the — day of — next, together with interest for the same after the rate of *5l. per cent. per annum*, computed from the date of this surrender, clear of all taxes and deductions whatsoever, (and being the same principal and interest monies as are mentioned to be secured to the said *G. H.* by the covenant (*h*) of the said *E. F.*, contained in a certain indenture bearing even date herewith,) then this surrender is to be void and of no effect, otherwise it is to remain in full force and virtue.

E. F.

Taken &c., by me,

C. D., deputy steward.

(*h*) A bond has been disused since the act of 1 W. 4, c. 47, which placed a cove-

nant on the same footing as regards devisees of land.

(Surrender out of court of copyholds of inheritance into the hands of two tenants, to the use of a trustee, by way of security.)

The manor of — } Be it remembered that on the — day of &c.,
 in the county of — } *A. B.* of &c., one of the customary or copyhold
 tenants of the said manor, came before us, *C. D.* of &c., and *E. F.* of
 &c., two other customary or copyhold tenants of the said manor, at the
 house of —, situate within the same manor, and, in consideration of the
 sum of £— — of lawful money &c., to the said *A. B.* in hand well
 and truly paid by *G. H.* of &c., and at the request and by the direction
 fo the said *G. H.*, testified by his subscribing his name at the foot of this
 surrender, did out of court surrender into the hands of the lord of the said
 manor, by the hands and acceptance of the said *C. D.* and *E. F.*, by the
 rod, according to the custom of the same manor, All &c., with the appur-
 tenances, (to which same premises the said *A. B.* was admitted at a general
 court held for the said manor on the — day of —;) and the reversion,
 &c., and all the estate, &c., to the use of *J. K.* of &c., his heirs and as-
 signs for ever, according to the custom of the said manor, upon the trusts
 nevertheless hereinafter expressed, that is to say, upon trust that the said
J. K., his heirs or assigns, in case the said *A. B.*, his heirs, executors or
 administrators, shall pay or cause to be paid unto the said *G. H.*, his execu-
 tors, administrators or assigns, the full sum of £— — of lawful money
 aforesaid, with lawful interest for the same, clear of all taxes and deduc-
 tions, on the — day of —, according to the purport and true meaning
 of the covenant of the said *A. B.* contained in a certain indenture bearing
 even date herewith, do and shall at any time thereafter, upon the request
 and at the costs and charges of him the said *A. B.*, his heirs or assigns, re-
 surrender all and singular the aforesaid customary or copyhold heredita-
 ments and premises, with the appurtenances, to the use of the said *A. B.*,
 his heirs and assigns for ever, according to the custom of the said manor
 of —, and in the mean time and until the said — day of —, and
 also thenceforth and until the said premises shall be re-surrendered in the
 manner hereinbefore mentioned (the said principal and interest monies be-
 ing so well and truly paid as aforesaid), do and shall stand seized or pos-
 sessed of the said customary or copyhold hereditaments and premises in
 trust for the said *A. B.*, his heirs and assigns. But in case default shall
 be made in payment of the same principal and interest monies, or any part
 thereof respectively, in manner aforesaid, then do and shall stand seized or
 possessed of the said hereditaments and premises, with their appurtenances,
 upon trust forthwith, or at any time after such default, upon being required
 thereunto by the said *G. H.*, his executors, administrators or assigns, to
 make sale and absolutely dispose of the said customary or copyhold here-
 ditaments and premises, or any part thereof, either by public auction or
 private contract, and together or in parcels, for the best price or prices that
 in the judgment of the said *J. K.*, his heirs or assigns, can or may be
 gotten for the same, and to surrender the premises so to be sold unto the
 purchaser or purchasers thereof, his, her or their heirs and assigns for ever,

according to the custom of the said manor, or as he, she or they shall direct or require; and upon further trust, by, with and out of the monies to arise from such sale or sales, and of the rents and profits of the said hereditaments and premises from and after any such default, and in the mean time and until such sale or sales, in the first place to pay and discharge all such costs, charges and expenses as the said *J. K.*, his heirs or assigns shall pay or sustain in procuring admittance by virtue of or under this surrender, or otherwise in the execution of the trusts hereby in him and them reposed, and in the next place, out of the trust monies aforesaid, to pay, satisfy and discharge the said principal and interest monies intended to be secured to the said *G. H.*, his executors, administrators and assigns, in and by this surrender and the aforesaid covenant of the said *A. B.*, or so much and such part thereof as shall then remain due and owing, and to pay the residue and surplus of the trust monies aforesaid unto the said *A. B.*, his executors, administrators or assigns; and it is hereby agreed and declared that the receipt and receipts of the said *J. K.*, his heirs or assigns, shall be a good and sufficient discharge and good and sufficient discharges to the purchaser or purchasers of the aforesaid hereditaments and premises for all or such part of his, her or their purchase monies as shall be therein acknowledged or expressed to be received, and that such purchaser or purchasers, his, her or their heirs, executors, administrators or assigns shall not be bound to see to the application of such purchase monies, nor be responsible for the loss, misapplication or non-application thereof, or any part thereof; and also that the said *J. K.*, his heirs or assigns, shall not be chargeable with nor accountable for any monies other than such as he or they shall actually receive by virtue of the trusts hereby in him and them reposed, nor with nor for any loss or damage which may happen by placing the trust monies aforesaid in any bank or banker's hands, or elsewhere for safe custody, nor anywise in or about the execution of the aforesaid trusts, without his or their wilful neglect or default.

A. B.

Taken, &c., by us.

G. H.

C. D. } Customary or copyhold tenants
E. F. } of the aforesaid manor.

(Surrender out of court by A. B., holding a grant to him and his heirs for three lives, to a purchaser.)

The manor of — } Be it remembered that on the — day of —,
 in the county of — } in the — year of the reign &c., and in the year
 of our Lord —, *A. B.* of &c., who, at a court holden for the said
 manor on the — day of —, was admitted to the customary or copy-
 hold hereditaments hereinafter described, to hold to him the said *A. B.*
 and his heirs for the lives of *C. D.*, *E. F.* and *G. H.*, and the life of the
 longest liver of them, came before *J. S.*, steward of the said manor, and in
 consideration of the sum of £— — — of lawful money &c., to him the
 said *A. B.* in hand well and truly paid by *I. K.* of &c., did out of court

surrender into the hands of the lord of the said manor, by the hands and acceptance of the said steward, by the rod, according to the custom of the said manor, All &c., with the appurtenances to the same premises belonging or appertaining; and all the estate, right, title, interest, benefit, power, claim and demand whatsoever of the said *A. B.*, in, to, or out of the same premises and every part thereof; to the use of the said *I. K.* and his heirs, for and during the lives of the said *C. D.*, *E. F.* and *G. H.*, and the life of the longest liver of them, according to the custom of the said manor.

A. B.

Taken and accepted, the day
and year first above writ-
ten, by me,

J. S., steward of the said manor.

(Warrant to enter satisfaction on a conditional surrender) (i).

The manor of — } I, *C. D.* of &c., do hereby acknowledge to have
in the county of — } received of and from *A. B.* of &c., all principal and
interest monies due and owing to me upon or by virtue of a conditional
surrender made and executed by the said *A. B.*, of certain customary or
copyhold hereditaments lying within and holden of the said manor, and
bearing date the — day of —; and I do hereby direct and require the
steward of the said manor to enter satisfaction thereof on the court rolls of
the same manor, and for so doing this shall be his sufficient warrant and
authority.

C. D.

(Surrender out of court by tenant in tail in remainder, with the consent of the tenant for life, (the protector under the provisions of 3rd and 4th W. 4. c. 74,) for the purpose of acquiring a reversionary estate in fee simple) (k).

The manor of — } Whereas under and by virtue of the limitations
in the county of — } contained in [state whether a surrender by way of
settlement or a will] the customary or copyhold hereditaments hereinafter
described were and do now stand limited to the use of *A. B.* of &c., for the
term of his life, with remainder to *C. D.* of &c., and the heirs of his body
lawfully issuing, with several remainders over; and at a court held for the
said manor on the — day of — the said *A. B.* was admitted tenant of

(i) Sometimes this warrant has been put upon the stamp required for a power of attorney; but query whether the act of 55 Geo. 3, c. 184, has imposed any duty on such an instrument. See form of acknowledgment of satisfaction in court, ante, 789.

(k) This form assumes that *C. D.* was in the seizin, under the rule that the admittance of the tenant for life is the admittance of the persons intitled in remain-

der. If by the custom remainder-men are compellable to be admitted, then add a recital, that at a court held &c., the said *C. D.* was duly admitted to the same hereditaments, to hold to him and the heirs of his body in remainder expectant and to take effect in possession on the decease of the said *A. B.*, according to the true intent and meaning of the said [surrender or will].

the same hereditaments for the term of his life, according to the form and effect of the said [state whether surrender or will.]

Now be it remembered that on the — day of —, in the year of our Lord —, the said *C. D.* came before *W. B.*, deputy steward for that purpose and turn only of *J. S.*, chief steward of the said manor, and for the purpose of barring and extinguishing the said estate tail, to which he the said *C. D.* is so intitled as aforesaid, of and in the said hereditaments hereinafter described, and all remainders and reversions expectant thereupon, and of vesting the same hereditaments in the said *C. D.* and his heirs absolutely in remainder from and after the decease of the said *A. B.*, according to the custom of the said manor; and with the consent of the said *A. B.*, signified by his signature to this memorandum of surrender, in compliance with the direction in that behalf contained in an act of parliament passed in the 4th year of the reign of his late Majesty King William the Fourth, for the abolition of fines and recoveries and for the substitution of more simple modes of assurance, did out of court surrender into the hands of the lord of the said manor, by the hands and acceptance of the said deputy steward, by the rod, according to the custom of the said manor, All &c., with the appurtenances to the same premises belonging or appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, benefit, power, claim and demand whatsoever of the said *C. D.*, in, to, or out of the same premises, and every part thereof, to the use of him the said *C. D.*, his heirs and assigns for ever, in remainder expectant and to take effect in possession on the decease of the said *A. B.* and according to the custom of the said manor (*l*).

C. D.

A. B.

Taken and accepted the —
day of —, by me,

W. B., deputy steward.

(Surrender out of court by tenant in tail in remainder, in order to acquire a base fee) (m).

The manor of — } Whereas under and by virtue of the limitations
in the county of — } contained in [state whether a surrender by way of
settlement or a will] the customary or copyhold — — and hereditaments hereinafter described were and do now stand limited to the use of *A. B.* of &c., for the term of his life, with remainder to *C. D.* of &c., and the heirs male of his body lawfully issuing, with several remainders over; and at a court held for the said manor on the — day of — the said *A. B.* was admitted tenant of the same hereditaments for the term of his life according to the form and effect of the said [state whether a surrender or will] (*n*).

(*l*) See presentment of and admittance under this surrender, ante, 778.

(*m*) See presentment of and admittance under this surrender, ante, 779.

(*n*) The author has assumed that the admittance of *C. D.* to the estate tail in remainder is rendered unnecessary, by the rule that the admittance of the particular.

Now be it remembered that on the — day of —, in the year of our Lord —, the said *C. D.* came before *J. S.*, steward of the said manor, and for the purpose of acquiring a base customary fee in the said hereditaments, by virtue and in pursuance of the provisions contained in an act of parliament passed in the 4th year of the reign of his late Majesty King William the Fourth, for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance, did out of court surrender into the hands of the lord of the said manor, by the hands and acceptance of the said steward by the rod, according to the custom of the said manor, All &c., with the appurtenances to the same premises belonging or appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, benefit, power, claim and demand whatsoever of the said *C. D.*, in, to, or out of the same premises and every part thereof, to the use of him the said *C. D.*, his heirs and assigns for ever, in remainder expectant and to take effect in possession on the decease of the said *A. B.*, and according to the custom of the said manor.

C. D.

Taken and accepted the —
day of —, by me,

J. S., steward of the said manor.

(Surrender out of court by a feme covert tenant in tail and her husband, in order to acquire an absolute customary fee) (o).

The manor of — } Whereas *A. B.*, late of &c., deceased, one of the
in the county of — } customary or copyhold tenants of the said manor,
in and by his last will and testament in writing, bearing date &c., gave
and devised all his copyhold estates lying within and holden of the said
manor unto his daughter *C. B.*, and the heirs of her body, with remainders
over, and afterwards departed this life without revoking or altering his said
will, which was duly proved by the executors therein named in the Prero-
gative Court of Canterbury on or about the — day of —. And whereas
the said *C. B.* was at a court holden for the said manor on the — day of —
admitted tenant of the customary or copyhold — — and hereditaments
hereinafter described, according to the form and effect of the devise so made
to her by her said late father as aforesaid. And whereas the said *C. B.* hath
lately intermarried with *E. F.* of &c.; Now be it remembered that on the
— day of — the said *E. F.* and *C.* his wife came before *J. S.*, steward
of the said manor, and for the purpose of barring and extinguishing the
said estate tail of and in the — — and hereditaments hereinafter
described, to which the said *C. F.* is so intitled as aforesaid, and all remain-
ders and reversions expectant thereupon, and of vesting the same heredita-
ments in the said *C. F.* and her heirs absolutely according to the custom
of the said manor, the said *C. F.* being first examined by the said steward

tenant is the admittance of all persons in-
titled in remainder. If *C. D.* were ad-
mitted to the remainder in fee, the fact

should be recited in the present surrender.

(o) See presentment of and admittance
under this surrender, ante, 780.

separately and apart from her said husband, and freely and voluntarily consenting thereto, did, by virtue and in pursuance of the provisions contained in an act of parliament passed in the 4th year of the reign of his late Majesty King William the Fourth for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance (*p*), surrender into the hands of the lord of the said manor, by the hands and acceptance of the said steward by the rod, according to the custom of the said manor, All &c., with the appurtenances to the same premises belonging or appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, benefit, power, claim and demand whatsoever of the said *E. F.* and *C.* his wife respectively, in, to, or out of the same premises and every part thereof, to the use of the said *C. F.*, her heirs and assigns for ever, according to the custom of the said manor.

E. F.
C. F.

Taken and accepted the — day of —, (the said *C. F.* being first by me examined separately and apart from her said husband, and freely and voluntarily consenting thereunto,) by me,

J. S., steward of the said manor.

(Surrender out of court by a feme covert equitably intitled to remainder in fee, and her husband, to a purchaser) (q).

The manor of — } Whereas *A. B.*, late of &c., deceased, in and by
in the county of — } his last will and testament in writing, bearing date &c., gave and devised all his copyhold estates lying within and holden of the said manor, by the description of &c., unto *C. D.* of &c., esquire, and *E. F.* of &c., gentleman, and their heirs, in trust to pay the rents and profits thereof unto *H. B.*, the wife of the said *A. B.*, (if she should happen to survive him,) for the term of her natural life, for her separate use and benefit in the manner therein mentioned, and from and after the decease of the said *H. B.* to stand possessed of the said thereby devised copyhold estates in trust for *J. B.*, spinster, the only child of the said *A. B.* and *H.* his wife, her heirs and assigns for ever. And whereas the said *A. B.* afterwards departed this life, leaving the said *H. B.* his wife him surviving, and without having revoked or in anywise altered his said in part recited will, which was proved by the executors therein named in the Prerogative Court of Canterbury on the — day of —. And whereas at a court holden for the said manor on the — day of — the said *C. D.* and *E. F.* were admitted to the customary or copyhold hereditaments hereinafter described, upon and for the trusts, intents and purposes expressed concerning the same in the said will of the said *A. B.* deceased. And whereas

(*p*) The estate of the wife being an n. (*y*), 751.

estate at law, a surrender is the only proper mode of barring the intail; see sec. (q) See presentment of this surrender, ante, 781.

77 of the above act. Vide also ante, 748,

sion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, trust, interest, benefit, power, claim and demand whatsoever of the said *E. F.* in, to or out of the said hereditaments and premises and every part thereof, to the use of the said *G. H.* his heirs and assigns for ever, according to the custom of the said manor.

E. F.

Taken and accepted this —— day
of &c., by me,

J. S., steward of the said manor.

(Voluntary grant out of court of copyholds of inheritance, reverting to the lord by forfeiture or escheat).

The manor of —— } Whereas at a special court baron of *A. Z.* es-
in the county of —— } quire, lord of the said manor, holden in and for the
same manor on the —— day of &c., *A. B.* of &c., was admitted tenant of
the customary or copyhold —— and hereditaments hereinafter de-
scribed, with their appurtenances, on the surrender of *C. D.* of &c., [or
as the customary heir (or under the last will and testament) of &c.,] to
hold to him the said *A. B.* and his heirs for ever according to the custom
of the said manor: And whereas [recite the act of forfeiture (or the death
of *A. B.* without leaving a customary heir)], and such act and cause of
forfeiture [or such death of the said *A. B.*] were at a general court baron
held in and for the said manor on the —— day of ——, presented by the
homage of that court as part of their verdict (*l*): And whereas at the last
mentioned court, *J. S.* esquire, steward of the said manor, issued a precept
to *W. Y.*, bailiff of the same manor, to seize the said —— and here-
ditaments into the hands of the lord by reason of the forfeiture [or es-
cheat] aforesaid; and on the —— day of —— last, the said *W. Y.* seized
all and singular the same customary or copyhold hereditaments into the
hands and for the use of the lord of the said manor, as by the said precept
he was commanded, in the presence of —— and ——, customary or copy-
hold tenants of the same manor: And whereas subsequently to the seizure
so made as aforesaid an action of ejectment was brought by the said *A. Z.*
in the —— court of —— against —— and ——, the occupiers of the said
customary or copyhold hereditaments, for obtaining the actual possession
thereof, and in —— term now last past judgment was recovered by the
said *A. Z.* in the same action, and thereupon the sheriff for the said county
of —— gave and delivered possession of the same hereditaments and pre-
mises unto him the said *A. Z.* (*m*), who is now therefore in the actual as
well as the legal possession thereof as lord of the said manor.

(*l*) It is usual and better to have the cause of forfeiture presented by the homage; Co. Cop. s. 58, Tr. 135; Gilb. Ten. 246; 1 Watk. on Cop. 346; but such presentment is not absolutely necessary, ante,

pt. 1, p. 450.

(*m*) If the occupiers attorned tenants to the lord on the execution of the precept of seizure, substitute a recital of that fact, ante, pt. 1, p. 289.

Now be it remembered that on this — day of —, in the year of our Lord —, the lord of the said manor, by the said *J. S.*, steward of the same manor, with full power to make voluntary grants of any of the customary or copyhold messuages, lands and hereditaments falling into the hands of the lord by forfeiture or escheat, and either in or out of court (*n*), and on the prayer of *E. F.* of &c., doth grant and deliver seizin by the rod, according to the custom of the manor, unto him the said *E. F.*, of All &c., with the appurtenances to the same premises belonging or appertaining: *to have and to hold* the said customary or copyhold — — — hereditaments and premises, with their appurtenances, unto the said *E. F.* and his heirs for ever, to be holden of the lord by copy of court roll at the will of the lord, according to the custom of the said manor, by fealty, suit of court, fine on admission, the ancient annual rent or rents, heriots when they shall happen, and other the duties and services therefore due and of right accustomed; and so (saving the rights of the lord) the said *E. F.* is admitted tenant of the same premises, and thereupon pays to the lord for a fine the sum of £—— —, and his fealty is respited.

(Precept of seizure by reason of the above forfeiture) (o).

(Deed of covenant to surrender copyholds of inheritance to a purchaser).

This indenture made the — day of &c., between *A. B.* of &c., of the one part, and *C. D.* of &c., of the other part: Whereas the said *A. B.* hath contracted and agreed with the said *C. D.* for the sale to him of the customary or copyhold hereditaments hereinafter described and covenanted to be surrendered, with their appurtenances, for an estate of inheritance in fee simple in possession, according to the custom of the manor of —, in the county of —, free from incumbrances as hereinafter mentioned, at or for the price or sum of £——: And whereas the several deeds, evidences and writings specified in the schedule hereunder written relate as well to the said customary or copyhold hereditaments hereinafter described as to other hereditaments, the estate and inheritance of the said *A. B.*, of much greater value, and it hath therefore been agreed that the same deeds, evidences and writings shall remain in the custody of the said *A. B.*, and that he shall enter into the covenant for production and safe custody thereof hereinafter contained (*p*): Now this indenture witnesseth, that for and in consideration of the sum of £—— of lawful money &c., unto the said *A. B.* in hand well and truly paid by the said *C. D.* at or before the sealing and delivery of these presents, the receipt whereof the said *A. B.* doth hereby acknowledge, and thereof and from the same and every part thereof doth acquit, release, exonerate and discharge the said *C. D.*, his heirs, executors, administrators and assigns, and every of them for ever by these

(*n*) Ante, pt. 1, tit. "Steward," p. 116; and see reference to 4 & 5 Vict. c. 35, s. 87; ante, pt. 1, p. 102, and the act itself in the appendix.

(*o*) See form of precept to seize on for-

feiture in consequence of the non-appearance of the heir, &c., under a special custom, or by an attainder of felony, &c.¹ ante, p. 829.

(*p*) Ante, pt. 1, p. 493, et seq.

presents, (the *ad valorem* stamp in respect of which said purchase money is intended to be affixed to the surrender of the said hereditaments according to the provisions of the act of parliament imposing such duty,) he the said *A. B.* for himself, his heirs, executors and administrators, doth hereby covenant, promise and agree with and to the said *C. D.* his heirs and assigns, that the said *A. B.* or his heirs, and all other necessary parties, shall and will, at the next or some subsequent general or at any special court baron or customary court to be holden for the manor of — aforesaid, or out of court, upon the request and at the costs and charges of the said *C. D.*, his heirs or assigns, duly surrender into the hands of the lord or lady, lords or ladies of the said manor for the time being, according to the custom of the same manor, All &c., with their and every of their appurtenances, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of the said *A. B.*, in, to, or out of the same hereditaments and premises and every part thereof, to the use of the said *C. D.*, his heirs and assigns for ever, as he or they shall direct or require, and according to the custom of the said manor; and that in the meantime and until such surrender shall be so made as aforesaid, and the said *C. D.*, his heirs or assigns, shall procure admittance by virtue thereof, he the said *A. B.* and his heirs shall and will stand seized and possessed of all and singular the same customary or copyhold hereditaments and premises in trust only for the said *C. D.* his heirs and assigns. And the said *A. B.* for himself, his heirs, executors and administrators, doth further covenant, promise, grant and agree with and to the said *C. D.*, his heirs and assigns, by these presents, in manner following, that is to say, that, (for and notwithstanding any act, deed, matter or thing whatsoever by him the said *A. B.* or any of his ancestors at any time heretofore made, done, committed, executed or wittingly suffered to the contrary,) he the said *A. B.* now at the time of sealing and delivery of these presents is and standeth lawfully and rightfully seized of the said customary or copyhold lands, hereditaments and premises hereinbefore covenanted to be surrendered, with their appurtenances, for a good, sure, perfect, lawful, absolute and indefeasible estate of inheritance in fee simple in possession, according to the custom of the manor of — aforesaid, without any manner of condition, trust, or other restraint, cause, matter or thing whatsoever, to alter, change, defeat, revoke, impeach, make void or determine the same: And also that he the said *A. B.*, (for and notwithstanding any such act, deed, matter or thing as aforesaid,) hath in himself good right, full power and lawful and absolute authority to surrender, convey and assure all and singular the said customary or copyhold lands, hereditaments and premises hereinbefore covenanted to be surrendered, with their appurtenances, in manner expressed in and according to the true intent and meaning of the covenant in that behalf hereinbefore contained: And moreover that it shall and may be lawful to and for the said *C. D.*, his heirs and assigns, from time to time and at all times for ever hereafter, peaceably and quietly to enter into and upon, have, hold, occupy, possess and enjoy all and singular the same

customary or copyhold hereditaments and premises, with their appurtenances, and to receive and take the rents, issues and profits thereof to and for his and their own use and benefit, without any lawful let, suit, trouble, molestation, eviction, ejection, interruption or disturbance whatsoever, of, from or by the said *A. B.* or his heirs, or of, from or by any other person or persons whomsoever, lawfully or equitably and rightfully claiming or to claim by, from, under or in trust for him or them, or by, from or under any of his ancestors; and that, free and clear, and freed and clearly and absolutely acquitted, exonerated and discharged, or otherwise by the said *A. B.*, his heirs, executors and administrators, well and effectually saved, defended, kept harmless and indemnified of, from and against all and all manner of former and other surrenders, gifts, bargains, sales, leases, mortgages, jointures, settlements, dowers, free-bench, annuities, trusts, wills, intails, forfeitures, escheats, and all and singular other estates, titles, troubles, charges and incumbrances whatsoever, had, made, done, committed, executed, occasioned or suffered by him the said *A. B.* or any of his ancestors, or by any person or persons whomsoever lawfully or equitably claiming by, from, under or in trust for him, them or any of them, or by, with or under his, their or any of their acts, means, default, privity, consent or procurement, (except only the customary rents, fines, duties and services payable and to be performed in respect of the same hereditaments and premises to the lord or lady, lords or ladies of the manor of — aforesaid for the time being :) And further that he the said *A. B.* and his heirs, and all and every other persons and person having, or lawfully or equitably claiming or to claim any estate, right, title or interest in, to or out of the said customary or copyhold hereditaments and premises or any part thereof, by, from, under or in trust for him or them or any of his ancestors, shall and will from time to time and at all times for ever hereafter, upon the reasonable request and at the proper costs and charges in the law of the said *C. D.*, his heirs or assigns, make, do and execute, or cause and procure to be made, done and executed all and every such further and other acts, deeds, surrenders, conveyances and assurances in the law whatsoever for the further, better, more perfect and absolute surrendering, conveying, assuring and confirming all and singular the said customary or copyhold lands, hereditaments and premises hereinbefore covenanted to be surrendered, with their appurtenances, to the use of the said *C. D.*, his heirs and assigns for ever, or as he or they shall direct or appoint, and according to the custom of the manor of — aforesaid, as by the said *C. D.*, his heirs or assigns, or his or their counsel learned in the law shall be lawfully and reasonably devised or advised and required: And lastly, that he the said *A. B.*, his heirs, executors, administrators or assigns, shall and will from time to time and at all times hereafter, upon reasonable notice, and at the request, costs and charges of the said *C. D.*, his heirs or assigns, (unless prevented by fire or other inevitable accident,) produce and show forth, or cause and procure to be produced and shown forth unto the said *C. D.*, his heirs and assigns, or his or their counsel, attornies, solicitors or agents, or in any court or courts of law or equity, or upon any motion, petition, ex-

amination, commission, trial or hearing, or otherwise, as occasion shall require, all and every or any of the said deeds, evidences and writings mentioned and set forth in the schedule hereunder written, for the manifesting, evidencing, maintaining, defending and proving the title, estate, right, interest, property and possession of the said *C. D.*, his heirs and assigns, in and to the said customary or copyhold hereditaments and premises hereinbefore covenanted to be surrendered; and also shall and will upon the like request, costs and charges of the said *C. D.*, his heirs or assigns, make and deliver, or cause to be made and delivered unto him or them true and attested or other copies or extracts of all or any of the said deeds, evidences and writings, and shall and will keep and preserve the same respective deeds, evidences and writings whole, uncanceled and unobliterated (casualties as aforesaid only excepted). In witness, &c.

(The schedule above referred unto).

(Release of freeholds and covenant to surrender copyholds to a purchaser).

This indenture made &c., between *A. B.* of &c., of the one part, and *C. D.* of &c., of the other part: Whereas the said *A. B.* hath lately contracted and agreed with the said *C. D.* for the sale to him of the freehold messuages, lands and hereditaments hereinafter described and intended to be hereby granted and released, with their appurtenances, for an estate of inheritance in fee simple in possession; and also of the customary or copyhold lands and hereditaments hereinafter also described and covenanted to be surrendered, with their appurtenances, for a like estate of inheritance, according to the custom of the manor of — in the county of —, and respectively free from incumbrances as hereinafter mentioned, at or for the price or sum of £——: And whereas for the purpose of complying with the provisions of the act of parliament imposing an *ad valorem* duty on all conveyances of estates, it has been agreed that the sum of £—— shall be considered as the consideration money for the purchase of the said freehold hereditaments, and the sum of £—— as the consideration money for the purchase of the said customary or copyhold hereditaments, and that the *ad valorem* stamp in respect of the last-mentioned hereditaments shall be affixed to the surrender thereof: Now this indenture witnesseth that in pursuance and performance of the said recited contract and agreement, and for and in consideration of the sum of £—— of lawful money &c., unto the said *A. B.* in hand well and truly paid by the said *C. D.* in the proportions and manner aforesaid at or before the sealing and delivery of these presents, the receipt whereof the said *A. B.* doth hereby acknowledge, and thereof and from the same and every part thereof doth acquit, release, exonerate and discharge the said *C. D.*, his heirs, executors, administrators and assigns and every of them for ever by these presents, he the said *A. B.*, by force and virtue of the act of parliament passed in the fourth year of the reign of her said present majesty, intituled “An Act for rendering a Release as effectual for the Conveyance of Freehold Estates as a Lease and Release by the same Parties,” hath granted, bargained,

sold, aliened and released, and by these presents doth grant, bargain, sell, alien and release unto the said *C. D.*, his heirs and assigns, All &c., together with all houses, &c., and appurtenances whatsoever to the said freehold hereditaments and premises belonging or in anywise appertaining, or therewith usually held, occupied or enjoyed, or accepted, reputed, deemed, taken or known as part, parcel or member thereof; and the reversion and reversions, remainder and remainders, yearly and other rents, issues and profits of all and singular the said messuages, lands, hereditaments and premises mentioned or intended to be hereby granted and released; and all the estate, right, title, interest, inheritance, use, trust, property, power, claim and demand whatsoever both at law and in equity of the said *A. B.* in, to, or out of the same premises and every part thereof; and all deeds, evidences and writings in anywise relating to the same hereditaments and premises now in the custody or power of the said *A. B.*, or which he can procure without suit at law or in equity: *to have and to hold* the said messuages, lands, hereditaments and all and singular other the premises hereinbefore granted and released or intended so to be, with their appurtenances, unto the said *C. D.*, his heirs and assigns, to the only proper use and behoof of the said *C. D.*, his heirs and assigns for ever, and to or for no other use, intent or purpose whatsoever. And this indenture also witnesseth, and for the considerations aforesaid the said *A. B.* for himself, his heirs, executors and administrators, doth hereby covenant, promise and agree with and to the said *C. D.*, his heirs and assigns, that he the said *A. B.* and all other necessary parties shall and will, at the next or some subsequent general or at any special court baron or customary court to be holden for the manor of — aforesaid, or out of court, upon the request and at the costs and charges of the said *C. D.*, his heirs or assigns, duly surrender into the hands of the lord or lady, lords or ladies of the said manor for the time being, and according to the custom thereof, All &c., with all and singular the appurtenances to the same premises belonging or appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, benefit, power, claim and demand whatsoever of the said *A. B.* in, to or out of the same customary or copyhold hereditaments and premises and every part thereof, to the use of the said *C. D.* his heirs and assigns for ever, or as he or they shall direct or require, and according to the custom of the manor of — aforesaid; and that in the meantime and until such surrender or surrenders shall be so made as aforesaid, and the said *C. D.*, his heirs or assigns, shall obtain admittance by virtue thereof, he the said *A. B.* and his heirs shall and will stand and be seized or possessed of the same customary or copyhold hereditaments and premises in trust only for the said *C. D.*, his heirs and assigns. And the said *A. B.* for himself, his heirs, executors and administrators doth further covenant, promise, grant and agree with and to the said *C. D.*, his heirs and assigns, by these presents in manner following, that is to say, that he the said *A. B.* now at the time of the sealing and delivery of these presents, is and standeth lawfully and rightfully seized of the said freehold messuages, lands, hereditaments and premises hereby

granted and released or intended so to be and of every part thereof, with their appurtenances, for a good, sure, perfect, lawful, absolute and indefeasible estate of inheritance in fee simple in possession, and of the said customary or copyhold lands, hereditaments and premises hereinbefore covenanted to be surrendered, for a like estate of inheritance, according to the custom of the manor of — aforesaid, without any manner of condition, trust, power of revocation, limitation of use or uses, or any other restraint, cause, matter or thing whatsoever to alter, change, defeat, revoke, impeach, make void or determine the same: And also that he the said *A. B.* now hath in himself good right, full power and lawful and absolute authority to grant, bargain, sell, release, surrender, convey and assure all and singular the said freehold and customary or copyhold hereditaments and premises hereby granted and released or intended so to be and hereinbefore covenanted to be surrendered, with their appurtenances, to the use of the said *C. D.*, his heirs and assigns for ever in manner aforesaid, and according to the true intent and meaning of these presents and the parties hereunto: And moreover that it shall and may be lawful to and for the said *C. D.*, his heirs and assigns, from time to time and at all times for ever hereafter, peaceably and quietly to enter into and upon, have, hold, occupy, possess and enjoy all and singular the same freehold and customary or copyhold hereditaments and premises, with their appurtenances, and to receive and take the rents, issues and profits thereof and of every part thereof respectively to and for his and their own use and benefit, without any lawful let, suit, trouble, molestation, eviction, ejection, interruption or disturbance whatsoever of, from or by the said *A. B.* or his heirs, or any other person or persons whomsoever lawfully or equitably and rightfully claiming or to claim any estate, right, title, trust or interest in, to or out of the same premises or any part thereof respectively; and that, free and clear, and freed and clearly and absolutely acquitted, exonerated and discharged or otherwise by the said *A. B.*, his heirs, executors and administrators, well and effectually saved, defended, kept harmless and indemnified of, from and against all and all manner of former and other gifts, grants, bargains, sales, leases, mortgages, jointures, settlements, dower, free-bench, annuities, uses, trusts, wills, intails, statutes, recognizances, judgments, extents, executions, forfeitures, escheats, and all and singular other estates, titles, troubles, charges and incumbrances whatsoever (save and except the customary rents, fines, heriots, duties and services payable and to be performed to the lord or lady, lords or ladies of the manor of — aforesaid for the time being for and in respect of the same customary or copyhold hereditaments and premises or any part thereof): And further that he the said *A. B.* and his heirs, and all and every other persons and person having or lawfully or equitably claiming or to claim any estate, right, title, trust or interest in, to or out of the said hereditaments and premises hereby granted and released or intended so to be and hereinbefore covenanted to be surrendered or any part thereof respectively, (except in respect of the estates and interests hereinbefore excepted,) shall and will from time to time and at all times hereafter, upon the request and at the proper costs and charges in the

law of the said *C. D.*, his heirs or assigns, make, do and execute, or cause and procure to be made, done and executed all and every such further and other acts, deeds, conveyances, surrenders and assurances in the law whatsoever for the further, better, more perfect and absolute granting, releasing, conveying, surrendering, assuring and confirming all and singular the said freehold and customary or copyhold messuages, lands, hereditaments and premises hereby granted and released or intended so to be, and hereinbefore covenanted to be surrendered, with their appurtenances, to the use of the said *C. D.*, his heirs and assigns for ever, as by the said *C. D.*, his heirs or assigns, or his or their counsel learned in the law shall be lawfully and reasonably devised or advised and required. [When the freehold and copyhold lands lie intermixed, it may be proper to insert the following clause, though not absolutely necessary, as a conveyance of copyholds by deeds of lease and release is not a cause of forfeiture (*p*).] Provided always, and it is hereby agreed and declared by and between all the said parties hereto, that neither the description of estate aforesaid, nor any other matter or thing in these presents contained, shall be deemed, construed or adjudged to include all or any of the copyhold hereditaments and premises so contracted to be sold to the said *C. D.* as aforesaid in the grant and release intended to be hereby made of the freehold messuages, lands, hereditaments and premises so also contracted to be sold to the said *C. D.*, but that such grant and release shall be confined expressly to freehold hereditaments only, to the intent that no forfeiture may be committed of the said copyhold hereditaments and premises, or any part thereof, by the execution of these presents. In witness, &c.

(Qualified covenants for title as to the freehold part, and absolute covenants as to the copyhold part, in a deed similar to the last.)

And the said *A. B.* for himself, his heirs, executors and administrators, doth further covenant, promise, grant and agree with and to the said *C. D.*, his heirs and assigns, by these presents in manner following, (that is to say,) that (for and notwithstanding any act, deed, matter or thing whatsoever, by him the said *A. B.*, or by — his late father deceased, at any time heretofore made, done, committed, executed or wittingly suffered to the contrary), he the said *A. B.*, now at the time of the sealing and delivery of these presents, is and standeth lawfully and rightfully seized of the said freehold messuages, lands, hereditaments and premises hereby granted and released or intended so to be, and of every part thereof, with their appurtenances, for a good, sure, perfect, lawful, absolute and indefeasible estate of inheritance in fee simple in possession, without any manner of condition, trust, power of revocation, limitation of use or uses, or any other restraint, cause, matter or thing whatsoever to alter, change, defeat, revoke, impeach, make void, lessen or determine the same; and that (for and notwithstanding any act, deed, matter or thing whatsoever by him the said *A. B.*, or any other person or persons whomsoever, at any time heretofore made,

(*p*) Ante, pt. 1, pp. 149, 446.

done, committed, executed or wittingly suffered to the contrary): he the said *A. B.* now at the time of the execution of these presents is seized of or well intitled to the said customary or copyhold lands, hereditaments and premises hereinbefore covenanted to be surrendered, for a like estate of inheritance in fee-simple in possession, according to the custom of the manor of — aforesaid, without any manner of condition, trust, power, or other restraint, cause, matter or thing whatsoever to alter, revoke, or determine the same; and also that he the said *A. B.*, (for and notwithstanding any such act, deed, matter or thing respectively as aforesaid,) now hath in himself, at the time of the sealing and delivery of these presents, good right, full power and lawful and absolute authority to grant, bargain, sell, release, surrender, convey and assure all and singular the said freehold and customary or copyhold hereditaments and premises hereby granted and released or intended so to be, and hereinbefore covenanted to be surrendered, with their appurtenances, to the use of the said *C. D.*, his heirs and assigns for ever, in manner aforesaid, according to the true intent and meaning of these presents and the parties hereunto; and moreover that it shall and may be lawful to and for the said *C. D.*, his heirs and assigns, from time to time and at all times for ever hereafter, peaceably and quietly to enter into and upon, have, hold, occupy, possess and enjoy all and singular the same freehold and customary or copyhold hereditaments and premises, with their appurtenances, and to receive and take the rents, issues and profits thereof, and of every part thereof respectively, to and for his and their own use and benefit, without any lawful let, suit, trouble, molestation, eviction, ejection, interruption, or disturbance whatsoever, of, from, or by the said *A. B.*, or his heirs, or of, from, or by any other person or persons whomsoever lawfully or equitably and rightfully claiming or to claim any estate, right, title or interest in, to or out of the said freehold premises, by, from, under or in trust for him or them, or by, from or under the said — — his late father deceased, or any estate, right, title, trust, or interest in, to, or out of the said copyhold premises, by, from, or under him the said *A. B.*, or any other person or persons whomsoever: and that, free and clear, and freed and clearly and absolutely acquitted, exonerated and discharged, or otherwise by the said *A. B.*, his heirs, executors, and administrators, well and effectually saved, defended, kept harmless and indemnified, of, from and against all and all manner of former and other gifts, grants, surrenders, bargains, sales, leases, mortgages, jointures, settlements, dower, free-bench, annuities, uses, trusts, wills, intails, statutes, recognizances, judgments, extents, executions, forfeitures, escheats, and all and singular other estates, titles, troubles, charges, and incumbrances whatsoever, had, made, done, committed, executed, or wittingly permitted or suffered of the said freehold premises by him the said *A. B.*, or by the said — — his late father deceased, or by any person or persons whomsoever claiming by, from, under or in trust for them or either of them, or by, with or under, their or either of their acts, means, default, privity, consent or procurement, or had, made, done, committed, executed or wittingly permitted, or suffered of the said customary or copyhold pre-

mises by the said *A. B.*, or any other person or persons whomsoever, (save and except the customary rents, fines, heriots, duties and services, payable and to be performed to the lord or lady, lords or ladies of the manor of — aforesaid, for the time being;) And further that the said *A. B.* and his heirs, and all and every persons and person having or lawfully or equitably claiming or to claim any estate, right, title or interest in, to or out of the said freehold hereditaments and premises or any part thereof, by, from, under or in trust for him or them, or the said — his late father deceased, or claiming or to claim any estate, trust or interest, at law or in equity, in, to or out of the said customary or copyhold premises by or under the said *A. B.*, or any other person or persons whomsoever, (except in respect of the estates or interests hereinbefore excepted,) shall and will, from time to time and all times hereafter, upon the request and at the proper costs and charges in the law of the said *C. D.*, his heirs or assigns, make, do and execute, or cause and procure to be made, done and executed, all and every such further and other acts, deeds, conveyances, surrenders and assurances in the law whatsoever, for the further, better, more perfect and absolute granting, releasing, surrendering, conveying, assuring and confirming all and singular the said freehold messuages, lands, hereditaments and premises hereby granted and released or intended so to be, with their appurtenances, to the use of the said *C. D.*, his heirs and assigns for ever, and all and singular the said customary or copyhold lands, hereditaments and premises hereinbefore covenanted to be surrendered, with their appurtenances, to the use of the said *C. D.*, his heirs and assigns for ever, according to the custom of the manor of — aforesaid, as by the said *C. D.*, his heirs or assigns, or his or their counsel learned in the law, shall be lawfully and reasonably devised or advised and required.

(Deed of covenants to accompany a conditional surrender of copyholds.)

This indenture made the — day of —, in the — year of the reign &c., and in the year of our Lord —, between *A. B.* of &c., of the one part, and *C. D.* of &c., of the other part: Whereas the said *A. B.* having occasion for the loan of the sum of £—, did lately apply to the said *C. D.* to lend and advance him the same, which he accordingly consented and agreed to do on having the repayment thereof, with lawful interest for the same, secured to him the said *C. D.* by a mortgage of the copyhold hereditaments hereinafter described, as hereinafter mentioned, and also collaterally secured by the covenant of the said *A. B.* hereinafter contained: And whereas the said *A. B.* in consideration of the sum of £— of lawful money of the united kingdom of Great Britain and Ireland current in England, advanced and lent to him by the said *C. D.*, hath at a court holden for the manor of —, in the county of —, on the day of the date of these presents, duly surrendered into the hands of the lord of the said manor — according to the custom of the same manor, All &c., together with the appurtenances to the said hereditaments and premises belonging or appertaining, to the use of the said *C. D.*, his heirs and assigns for ever, subject nevertheless to a proviso or condition contained in

the said surrender for making the same void, on payment by the said *A. B.*, his heirs, executors, administrators or assigns, unto the said *C. D.*, his executors, administrators or assigns, of the sum of £—— of lawful money aforesaid, with interest for the same after the rate of £5 per cent. per annum, on the —— day of —— next ensuing, clear of all taxes and deductions whatsoever: Now this indenture witnesseth, that in consideration of the said sum of £—— so lent and advanced to the said *A. B.* by the said *C. D.* as aforesaid, the receipt of which same sum the said *A. B.* doth hereby acknowledge, and of and from the same sum and every part thereof doth acquit, release, exonerate and discharge the said *C. D.*, his heirs, executors, administrators and assigns, and every of them for ever by these presents, he the said *A. B.*, for himself, his heirs, executors and administrators, doth covenant, promise and agree with and to the said *C. D.*, his heirs, executors, administrators and assigns, by these presents, in manner following, (that is to say,) that he the said *A. B.*, his heirs, executors or administrators, shall and will well and truly pay or cause to be paid unto the said *C. D.*, his executors, administrators or assigns, the said sum of £—— with interest for the same after the rate on the day and in manner mentioned and appointed in that behalf in the condition of the said recited surrender, without any deduction or abatement whatsoever and according to the purport, true intent and meaning of the same condition and of the parties hereto; And also that he the said *A. B.*, at the time of making the said recited surrender, was lawfully and rightfully seized of or well intitled to the said —— and hereditaments hereinbefore described, with their appurtenances, for a good, sure, perfect, lawful, absolute and indefeasible estate of inheritance in fee simple in possession, according to the custom of the manor of —— aforesaid, without any manner of condition, trust, or other restraint, cause, matter or thing whatsoever, to alter, change, defeat, revoke, impeach, make void, lessen or determine the same: And that he the said *A. B.*, at the time of making the before recited surrender, had in himself good right, full power and lawful and absolute authority to surrender, convey and assure all and singular the same customary or copyhold hereditaments and premises, with their appurtenances, to the use of the said *C. D.*, his heirs and assigns for ever, in manner aforesaid, and according to the true intent and meaning of the same surrender and of the parties hereto: And moreover that it shall and may be lawful to and for the said *C. D.*, his heirs and assigns, from time to time and at all times from and after default shall happen to be made in payment of the said principal sum of £—— or any part thereof, or the interest thereof or any part thereof, contrary to the true intent and meaning of the proviso or condition contained in the said recited surrender, peaceably and quietly to enter into and upon, have, hold, occupy, possess and enjoy all and singular the said customary or copyhold —— hereditaments and premises, with their appurtenances, and to receive and take the rents, issues and profits thereof and of every part thereof, to and for his and their own use and benefit, without any lawful let, suit, trouble, eviction, ejection, interruption or disturbance of, from or by the said *A. B.*, or his heirs, or of, from or by any other person or persons whomsoever; and that, free and

clear, and freed and clearly and absolutely acquitted, exonerated and discharged, or otherwise by the said *A. B.*, his heirs, executors and administrators, well and effectually saved, defended, kept harmless and indemnified of, from and against all and all manner of former and other gifts, grants, bargains, sales, leases, mortgages, settlements, dower or freebench, annuities, jointures, uses, trusts, wills, intails, forfeitures, escheats, and all and singular other estates, titles, troubles, charges and incumbrances whatever, (except only the customary fines, rents, suits and services thenceforth payable and to be performed in respect of the aforesaid copyhold hereditaments and premises, to the lord or lady, lords or ladies of the said manor of ——— for the time being :) And further that he the said *A. B.* and his heirs, and all and every other persons and person having or lawfully or equitably and rightfully claiming or to claim any estate, right, title, trust or interest in, to or out of the said hereditaments and premises so surrendered as aforesaid, with their appurtenances, shall and will from time to time and at all times from and after default shall happen to be made in payment of the said principal sum of £—— or any part thereof, or the interest thereof or any part thereof, contrary to the true intent and meaning of the proviso or condition contained in the said recited surrender and of the parties hereto, upon the request of the said *C. D.*, his heirs, executors, administrators or assigns, but at the proper costs and charges in the law of the said *A. B.*, his heirs, executors or administrators, make, do and execute or cause and procure to be made, done and executed all or any such further and other acts, deeds, surrenders and assurances in the law whatsoever, for the further, better, more perfect and absolute surrendering, assuring and confirming all and singular the said customary or copyhold ——— hereditaments and premises hereinbefore described, with their appurtenances, to the use of the said *C. D.*, his heirs and assigns for ever, according to the custom of the manor of ——— aforesaid, freed and absolutely discharged from the proviso or condition for redemption contained in the said recited surrender, and of and from all right and equity of redemption whatsoever, as by the said *C. D.*, his heirs or assigns, or his or their counsel learned in the law, shall be lawfully and reasonably devised or advised and required : And moreover that he the said *A. B.*, his heirs, executors, administrators or assigns shall and will, so long as the said principal and interest monies intended to be hereby secured or any part thereof respectively shall remain due and owing to the said *C. D.*, his executors, administrators or assigns, insure and keep insured all and every the messuages, erections and buildings hereinbefore described in some responsible insurance office or offices to the full value of so much thereof as can be destroyed by fire, and deposit the policy or policies whereby such insurance or insurances shall be effected with the said *C. D.*, his executors, administrators or assigns, and shall and will lay out and expend the monies to be received under the policy or policies whereby the same buildings shall be so insured, forthwith after receipt thereof, in re-building the same or in repairing such damage as may happen thereto by fire, and that in case the said *A. B.*, his heirs, executors, administrators and assigns shall neglect so to

insure and keep insured the same buildings or any of them, then it shall and may be lawful to and for the said *C. D.*, his heirs, executors, administrators or assigns, to insure and keep the same insured in manner aforesaid in his or their own name or names; and that he the said *A. B.*, his heirs, executors, administrators or assigns shall and will well and truly pay or cause to be paid unto the said *C. D.*, his executors, administrators or assigns, as well all and every such sum and sums of money as he the said *C. D.*, his heirs, executors, administrators or assigns shall or may advance or pay in, or by reason of any such insurance or insurances as last aforesaid, as also all and every such sum or sums of money as he or they shall or may pay and advance by way of fine, fees of court or otherwise, upon or in relation to any admittance of him the said *C. D.*, his heirs or assigns, at any time hereafter to all or any part of the said copyhold hereditaments and premises, under and by virtue of the said recited surrender: And that all and singular the said customary or copyhold hereditaments and premises with their appurtenances shall stand charged with and be subject to the payment not only of the principal and interest monies aforesaid, but also of all and every such sum and sums of money as the said *C. D.*, his heirs, executors, administrators or assigns shall advance, pay and expend in making and continuing such insurance and insurances, or upon or by reason of any such admittance of the said *C. D.*, his heirs or assigns, to the said copyhold hereditaments and premises as aforesaid, together with interest for the same after the rate aforesaid, to be computed from the time or respective times the same sum or sums respectively shall be so advanced and paid: And that the said customary or copyhold hereditaments and premises, or any part thereof respectively, shall not be redeemed nor redeemable either at law or in equity until as well all and every such last-mentioned sum or sums of money and interest, as the aforesaid principal and interest monies, shall be fully paid and satisfied unto the said *C. D.*, his executors, administrators or assigns, according to the true intent and meaning of the said recited surrender and these presents. Provided nevertheless, and it is hereby declared and agreed between and by the said parties to these presents, that in the meantime and until default shall happen to be made in payment of the said principal sum of £—, or some part thereof, or the interest thereof or some part thereof, contrary to the true intent and meaning of the proviso or condition contained in the said recited surrender and of the parties hereto, it shall and may be lawful to and for the said *A. B.*, his heirs and assigns, peaceably and quietly to have, hold, occupy, possess and enjoy all and singular the said customary or copyhold hereditaments and premises hereinbefore described, with their appurtenances, and to receive and take the rents, issues and profits thereof and of every part thereof to and for his and their own use and benefit, without any let, suit, trouble, molestation, eviction, ejection, interruption or disturbance whatsoever, of, from or by the said *C. D.*, his heirs, executors or administrators, or any person or persons lawfully or equitably claiming or to claim by, from or under him, them, or any of them. In witness &c.

*(Conveyance of freeholds, and covenant to surrender copyholds,
by way of mortgage.)*

This indenture made the — day of —, in the — year of the reign &c., and in the year of our Lord —, between *A. B.* of &c., of the one part, and *C. D.* of &c. of the other part: Whereas the said *A. B.* is seized of or well intitled to the freehold messuages, lands and hereditaments hereinafter described and intended to be hereby granted and released, with their appurtenances, for an estate of inheritance in fee simple in possession: And whereas the said *A. B.* is seized or well intitled for an estate of inheritance in fee simple in possession, according to the custom of the manor of —, in the county of —, of or to the customary or copyhold lands and hereditaments hereinafter described and covenanted to be surrendered with their appurtenances: And whereas the said *A. B.*, having occasion for the loan of the sum of £—, hath applied to and requested the said *C. D.* to lend and advance him the same, which he the said *C. D.* hath consented and agreed to do, on having the repayment thereof, with lawful interest, secured to him upon the said freehold and customary or copyhold hereditaments in the manner hereinafter mentioned, and also collaterally secured by the covenant of the said *A. B.* hereinafter contained (*q*): Now this indenture witnesseth, that in consideration of the sum of £— of lawful money &c., advanced and lent by the said *C. D.* unto the said *A. B.* at or before the sealing and delivery of these presents, the receipt of which said sum of £— the said *A. B.* doth hereby acknowledge, and of and from the same and every part thereof doth acquit, release, exonerate and discharge the said *C. D.*, his heirs, executors, administrators and assigns, and every of them for ever by these presents, he the said *A. B.*, by force and virtue of an act of parliament passed in the fourth year of the reign of her present majesty, intituled “An Act for rendering a Release as effectual for the Conveyance of Freehold Estates as a Lease and Release by the same parties,” hath granted, bargained, sold, aliened and released, and by these presents doth grant, bargain, sell, alien and release unto the said *C. D.*, his heirs and assigns, All &c., together with all houses &c., and appurtenances whatsoever to the said freehold messuages, lands, hereditaments and premises belonging, or in anywise appertaining, or therewith or with any part or parcel thereof held, used, occupied or enjoyed, or accepted, reputed, deemed, taken or known as part, parcel or member thereof; and the reversion and reversions, remainder and remainders, yearly and other rents, issues and profits thereof; and all the estate, right, title, interest, use, trust, property, power, claim and demand whatsoever at law or in equity of the said *A. B.* in, to or out of the same premises and every or any part thereof: *to have and to hold* the said freehold messuages, lands, hereditaments and all and singular other the premises hereby granted and released, or intended so to be, with their appur-

(*q*) As a covenant attaches upon devised estates under 1 Will. 4, c. 47, a bond is unnecessary.

tenances, unto the said *C. D.*, his heirs and assigns, to the use and behoof of the said *C. D.*, his heirs and assigns for ever, subject nevertheless to the proviso or condition for the redemption of the said premises hereinafter contained, (that is to say,) Provided always, and these presents are upon this express condition, and it is the true intent and meaning of the parties hereunto; and the said *C. D.* for himself, his heirs, executors, administrators and assigns, doth hereby covenant and agree with and to the said *A. B.*, his heirs and assigns, that if the said *A. B.*, his heirs, executors, administrators or assigns do and shall well and truly pay or cause to be paid unto the said *C. D.*, his executors, administrators or assigns, the sum of £—— of lawful money aforesaid, on the —— day of —— now next ensuing, with interest for the same after the rate of 5*l.* for every sum of 100*l.* for a year, to be computed from the day of the date of these presents, without making any deduction or abatement whatsoever thereout for or by reason of any taxes, charges, assessments, payments or impositions whatsoever already or to be at any time or times hereafter taxed, charged, assessed or imposed upon the said freehold hereditaments and premises or any part thereof, or upon the said principal sum of £—— or the interest thereof, or anywise for or in respect thereof, by authority of parliament or otherwise howsoever, then and in such case the said *C. D.*, his heirs or assigns shall and will at any time or times after such payment being made as aforesaid, upon the request and at the costs and charges of the said *A. B.*, his heirs or assigns, reconvey and reassure all and singular the said freehold messuages, lands, hereditaments and premises hereby granted and released, or intended so to be, with their appurtenances, unto and to the use of the said *A. B.*, his heirs and assigns for ever, or to such person or persons, and to, for and upon such estate and estates, uses, trusts, intents and purposes as he or they shall direct or appoint, free from all incumbrances whatsoever, to be had, made, done or committed in the mean time by him the said *C. D.*, his heirs, executors or administrators, or by any person or persons whomsoever lawfully or equitably claiming or to claim by, from or under him, them or any of them. And this indenture also witnesseth, and for the consideration aforesaid the said *A. B.* for himself, his heirs, executors, administrators and assigns doth hereby covenant, promise and agree with and to the said *C. D.*, his heirs, executors, administrators and assigns, that he the said *A. B.* or his heirs, and all other proper and necessary parties, shall and will at his or their own proper costs and charges, at the next or some subsequent general or special court baron to be holden for the manor of —— aforesaid, or out of court, upon the request of the said *C. D.*, his heirs, executors, administrators or assigns, well and effectually surrender into the hands of the lord or lady, lords or ladies for the time being of the said manor of ——, and according to the custom of the same manor, All &c., with the appurtenances to the same premises belonging or appertaining, and the reversion and reversions, remainder and remainders thereof, and all his and their right, title, estate and interest in, to or out of the same customary or copyhold hereditaments and premises, to the use of the said *C. D.*, his heirs and assigns for ever,

according to the custom of the manor of — aforesaid, subject nevertheless to a proviso or condition to be contained in the said surrender for making void the same on payment by the said *A. B.*, his heirs, executors, administrators or assigns unto the said *C. D.*, his executors, administrators or assigns of the said sum of £——, with interest for the same after the rate at the time and in manner hereinbefore mentioned and appointed for payment thereof, clear of all taxes and deductions whatsoever. And the said *A. B.* for himself, his heirs, executors and administrators doth hereby covenant, promise and agree with and to the said *C. D.*, his executors, administrators and assigns, that he the said *A. B.*, his heirs, executors or administrators shall and will well and truly pay or cause to be paid unto the said *C. D.*, his executors, administrators or assigns the said sum of £——, with interest for the same after the rate on the day and in manner hereinbefore mentioned, without any deduction or abatement whatsoever, according to the purport, true intent and meaning of these presents and of the parties hereunto : And also that he the said *A. B.*, his heirs, executors, administrators or assigns shall and will repay unto the said *C. D.*, his executors, administrators or assigns, on demand, all and every such sum or sums of money as he or they shall or may pay and advance by way of fine, fees of court, or otherwise upon or in relation to any admittance of him the said *C. D.*, his heirs or assigns, at any time hereafter, to all or any part of the said copyhold hereditaments and premises, under and by virtue of the surrender to be made thereof, pursuant to the covenant in that behalf hereinbefore contained, with lawful interest for the said last-mentioned sum or sums of money from the time or times the same shall be so advanced. And the said *A. B.*, for himself, his heirs, executors, administrators and assigns doth covenant, promise and agree with and to the said *C. D.*, his heirs and assigns, by these presents in manner following, (that is to say,) that he the said *A. B.* now, at the time of the sealing and delivery of these presents, is and standeth lawfully and rightfully seized of and well intitled to the said freehold messuages, lands, hereditaments and premises hereby granted and released, or intended so to be, and every part thereof, with their appurtenances, for a good, sure, perfect, lawful, absolute and indefeasible estate of inheritance in fee simple in possession, and of and in the said customary or copyhold lands, hereditaments and premises hereinbefore covenanted to be surrendered, with their appurtenances, for a like estate of inheritance in fee simple in possession, according to the custom of the manor of — aforesaid, without any manner of condition, trust, power of revocation, limitation of use or uses, or any other restraint, cause, matter or thing whatsoever, to alter, change, defeat, revoke, make void, lessen or determine the same : And also that he the said *A. B.* now hath in himself, at the time of the sealing and delivery of these presents, good right, full power and lawful and absolute authority to grant, release, surrender and assure all and singular the said freehold and customary or copyhold hereditaments and premises hereinbefore granted and released and covenanted to be surrendered, with their appurtenances, unto and to the use of the said *C. D.*, his heirs and assigns for ever, in manner aforesaid, according

to the purport, true intent and meaning of these presents: And moreover that it shall and may be lawful for the said *C. D.*, his heirs and assigns, from time to time and at all times from and after default shall happen to be made in payment of the said principal sum of £——, or any part thereof, or the interest thereof or any part thereof, contrary to the true intent and meaning of these presents, and the parties hereunto, peaceably and quietly to enter into and upon, have, hold, occupy, possess and enjoy all and singular the said freehold and customary or copyhold hereditaments and premises hereinbefore granted and released, and covenanted to be surrendered, with their appurtenances, and to receive and take the rents, issues and profits thereof and of every part thereof, to and for his and their own use and benefit, without any lawful let, suit, trouble, molestation, eviction, ejection, interruption or disturbance whatsoever of, from or by the said *A. B.*, his heirs or assigns, or of, from or by any other person or persons whomsoever; and that, free and clear and freed and absolutely acquitted, exonerated and discharged, or otherwise by the said *A. B.*, his heirs, executors and administrators well and effectually saved, defended, kept harmless and indemnified of, from and against all and all manner of former and other gifts, grants, bargains, sales, leases, mortgages, settlements, jointures, dower, freebench, rents, annuities, uses, trusts, wills, intails, statutes, judgments, recognizances, forfeitures, escheats, extents, executions, and of, from and against all and singular other estates, titles, charges and incumbrances whatsoever: And further that he the said *A. B.* and his heirs, and all and every other persons and person having, or lawfully or equitably claiming or to claim any estate, right, title, trust or interest in, to or out of the said freehold and customary or copyhold hereditaments and premises hereby granted and released and covenanted to be surrendered, shall and will from time to time and at all times from and after default shall happen to be made in payment of the said principal sum of £——, or any part thereof, or the interest thereof or any part thereof, contrary to the true intent and meaning of these presents and the parties hereunto, upon the request of the said *C. D.*, his heirs, executors, administrators or assigns, but at the proper costs and charges in the law of the said *A. B.*, his heirs, executors, administrators or assigns, make do and execute, or cause and procure to be made done and executed, all and every such further and other lawful and reasonable acts, conveyances, surrenders and assurances in the law whatsoever, for the further, better, more perfect and absolute granting, conveying, surrendering and assuring all and singular the same freehold and customary or copyhold hereditaments and premises, with their appurtenances, unto and to the use of the said *C. D.*, his heirs and assigns for ever, freed and absolutely discharged from the proviso or condition for redemption hereinbefore contained and intended to be contained in the surrender so to be made of the said customary or copyhold hereditaments and premises as aforesaid, and of and from all right, power and equity of redemption whatsoever, but nevertheless as to the said customary or copyhold premises subject and according to the custom of the manor of — aforesaid, as by the said *C. D.*, his

heirs, executors, administrators or assigns, or his or their counsel learned in the law, shall be devised or advised and required. Provided nevertheless, and it is hereby lastly agreed and declared by and between the said parties to these presents, that in the meantime and until default shall happen to be made in payment of the said principal sum of £—— or some part thereof, or the interest thereof or some part thereof, contrary to the true intent and meaning of these presents and the parties hereunto, it shall and may be lawful to and for the said *A. B.*, his heirs and assigns, peaceably and quietly to have, hold, occupy, possess and enjoy all and singular the said freehold and customary or copyhold hereditaments and premises hereinbefore granted and released and covenanted to be surrendered, with their appurtenances, and to receive and take the rents, issues and profits thereof, and of every part thereof respectively, to and for his and their own use and benefit, without any let, suit, trouble, molestation, eviction, interruption or disturbance whatsoever of, from or by the said *C. D.*, his heirs, executors or administrators, or any person or persons whomsoever lawfully or equitably and rightfully claiming or to claim by, from or under him, them or any of them. In witness &c.

(Covenant in a marriage settlement to surrender copyholds to trustees, upon trusts to correspond with the uses previously limited of freehold estates.)

And this indenture also witnesseth, that in pursuance and further performance of the said recited proposals and agreements made and entered into on the treaty for the said intended marriage, and for the considerations aforesaid, the said *A. B.*, for himself, his heirs, executors and administrators, doth hereby covenant, promise and agree with and to the said *C. D.* and *E. F.*, their heirs and assigns, that he the said *A. B.* or his heirs, and all other necessary and proper parties, shall and will, at the costs and charges of him the said *A. B.*, his heirs, executors or administrators, at the next or any subsequent court baron or customary court, to be held for the respective manors whereof the customary or copyhold hereditaments hereinafter described are holden, or out of court, upon the request of the said *C. D.* and *E. F.*, their heirs or assigns, well and effectually surrender into the hands of the lord or lady, lords or ladies of the aforesaid manors respectively for the time being, and according to the custom of the same respective manors, All &c., with the appurtenances to the same premises belonging or appertaining, and all his and their right, title, estate and interest therein or thereto, to the use of the said *C. D.* and *E. F.*, their heirs and assigns for ever, according to the custom of the said several and respective manors; but nevertheless upon such trusts, for such intents and purposes, and under and subject to such powers, provisos, declarations and agreements as will best and nearest correspond with the uses, trusts, limitations, powers, provisos, declarations and agreements hereinbefore limited, expressed, declared and contained of and concerning the freehold hereditaments and premises mentioned or intended to be hereby granted and released, so far as the different nature and tenure of the same estates respectively and the rules of law and equity will permit.

(Appointment of copyholds by a feme covert, in exercise of a power, to uses directed by a purchaser; and covenants by the husband to join with his wife in a surrender, by way of further assurance, and for the title.)

This indenture, made the — day of —, in the — year &c., and in the year of our Lord —, between *A. B.* of &c., and *M.* his wife (heretofore the wife and afterwards the widow of *C. D.* of &c., deceased), of the one part, and *E. F.* of &c., and *H.* his wife of the other part: Whereas at a general court baron held for the manor of —, in the county of —, on the — day of —, all and singular the customary or copyhold hereditaments hereinafter described, with their appurtenances, were duly surrendered by the said *C. D.* and *M. D.*, then his wife (now *M. B.*), to the use of the said *C. D.* and his assigns for his life, with remainder to the use of the said *M.*, then the wife of the said *C. D.* (now *M. B.*), and her assigns for her life, with remainder to such uses as the said *C. D.* and *M.*, then his wife (now *M. B.*), by any deed or deeds to be executed and attested as therein mentioned, should jointly limit or appoint, and for want of any such appointment, to such uses as the survivor of them the said *C. D.* and the said *M. D.*, then his wife (now *M. B.*), by any deed or deeds under his or her hand and seal, to be attested by two or more credible witnesses, or by his or her last will and testament in writing, to be executed and attested as therein mentioned, should limit or appoint; and in default of any such direction or appointment, to the use of the said *M. D.* (now *M. B.*), her heirs and assigns for ever, according to the custom of the said manor of —: And at the same court the said *C. D.* was admitted to the said customary or copyhold hereditaments and premises for the term of his life: And whereas the said *C. D.* some time since departed this life without having joined with the said *M. D.* his wife (now *M. B.*) in any appointment, by virtue of the joint power so given or reserved to them by or under the said recited surrender as aforesaid: And whereas at a court baron held for the said manor of —, on the — day of —, the said *M. D.* (now *M. B.*) was admitted to the said customary or copyhold hereditaments, to hold to her and her assigns for the term of her life, and she the said *M. D.* hath since intermarried with and is now the wife of the said *A. B.*: And whereas the said *A. B.* and *M.* his wife have contracted and agreed with the said *E. F.* for the sale to him of the said hereditaments hereinafter described, with the appurtenances, for an estate of inheritance in fee-simple in possession, according to the custom of the manor of — aforesaid, free from incumbrances (except as hereinafter is mentioned), at or for the price or sum of £—: And whereas the said *E. F.* hath requested that the said customary or copyhold hereditaments so contracted to be purchased by him as aforesaid may be conveyed and assured to the uses and in manner hereinafter mentioned: Now this indenture witnesseth that in pursuance and part performance of the said recited contract or agreement, and for and in consideration of the sum of £— of lawful money &c., unto the said *A. B.* and *M.* his wife in hand well and truly paid by the said *E. F.* at or before the sealing and delivery of these presents, the receipt whereof the

said *A. B.* and *M.* his wife do hereby acknowledge, and of and from the same and every part thereof do acquit, release, exonerate and discharge the said *E. F.*, his heirs, executors, administrators and assigns, and every of them for ever by these presents, (the *ad valorem* stamp in respect of which said purchase money is, in compliance with the provisions of the act of parliament imposing such duty, intended to be affixed to the surrender hereinafter covenanted to be made by the said *A. B.* and *M.* his wife,) she the said *M. B.* by force and virtue, and in exercise and execution of the said power or authority in this behalf given or reserved to her by and under the said recited surrender made on the — day of —, and of all and every other powers and authorities, power and authority, in anywise enabling her hereunto, and at the request and by the direction of the said *E. F.*, (testified by his being a party to and sealing and delivering these presents,) hath limited and appointed, and by this deed or instrument in writing, by her the said *M. B.* signed, sealed and delivered in the presence of and attested by the two credible persons whose names are intended to be hereon indorsed as witnesses to the signing, sealing and delivering hereof by her the said *M. B.*, doth limit and appoint All and singular the messuages or tenements, lands and hereditaments hereinafter described, with the appurtenances thereof, to the several uses hereinafter expressed concerning the same, and to or for no other use, intent or purpose whatsoever: And this indenture also witnesseth that in further pursuance and performance of the said recited contract or agreement, and for the consideration aforesaid, the said *A. B.* for himself and for the said *M. B.* his wife, and his and her heirs, executors and administrators, doth hereby covenant, promise and agree with and to the said *E. F.*, his heirs and assigns, that he the said *A. B.* and the said *M. B.* his wife, or her heirs, and all other necessary parties, shall and will, at the next or any subsequent court baron or customary court to be holden for the manor of — aforesaid, or out of court, upon the request and at the costs and charges of the said *E. F.*, his heirs or assigns, duly surrender into the hands of the lord or lady, lords or ladies of the same manor for the time being, and according to the custom thereof, All &c., with the appurtenances to the same premises belonging or appertaining, and all his, her and their estate, right, title, interest, claim and demand whatsoever in, to or out of the same customary or copyhold hereditaments and premises, and every part thereof, to the use of the said *E. F.* and his assigns for the term of his natural life, with liberty of committing waste so far as the same may be permitted by the custom of the aforesaid manor, or by license or otherwise, and from and after the decease of the said *E. F.*, to the use of the said *H.*, the wife of the said *E. F.*, and her assigns for the term of her natural life (*r*), with

(*r*) The 7 & 8 Vict. c. 76, for simplifying the transfer of property, referred to ante, pt. 1, p. 138, n. (*b*), was repealed by 8 & 9 Vict. c. 106, for amending the law of real property, the 6th sect of which act authorizes the disposition by deed of a contingent, an executory, and a future interest,

and a possibility coupled with an interest, in hereditaments of any tenure, every disposition by a married woman being made conformably to the provisions relative to dispositions by married women, of the act for the abolition of fines and recoveries.

The form of limitation given in the above

such liberty of committing waste as aforesaid, but no further or otherwise, and from and after the decease of the survivor of them the said *E. F.* and *H.* his wife, to the use of the heirs and assigns of the said *E. F.* for ever, according to the custom of the manor of — aforesaid, and to or for no other use, intent or purpose whatsoever: And the said *A. B.* for himself, and the said *M. B.* his wife, and his and her heirs, executors and administrators doth further covenant, promise, grant and agree with and to the said *E. F.*, his heirs and assigns, by these presents, in manner following, (that is to say,) that the said power of appointment, created by the said recited surrender bearing date the — day of —, is now at the time of the sealing and delivery of these presents a valid and subsisting power, and in no wise exercised, released, vacated or extinguished, either by the said *C. D.* and the said *M. D.*, late his wife (now *M. B.*), during their joint lives, or by the said *M. D.* (now *M. B.*), since the decease of the said *C. D.*: And also that the said *A. B.* and *M.* his wife, or one of them, have or hath in themselves, himself or herself, good right, full power and lawful and absolute authority to limit and appoint, surrender, convey and assure all and singular the said customary or copyhold messuages or tenements, lands, hereditaments and premises hereinbefore limited and appointed, and covenanted to be surrendered, with their appurtenances, in manner aforesaid, and according to the true intent and meaning of these presents: And moreover, that all and singular the said customary or copyhold messuages or tenements, lands, hereditaments and premises, with their appurtenances, shall henceforth and at all times for ever hereafter remain, continue and be to and for the uses, intents and purposes hereinbefore limited, expressed and contained of and concerning the same, and be peaceably and quietly held, used, occupied and enjoyed, and the rents, issues and profits thereof be had, received and taken accordingly, without any lawful let, suit, trouble, molestation, eviction, ejection, interruption or disturbance whatsoever of, from or by the said *A. B.* and *M.* his wife, or either of them, their or either of their heirs, or of, from or by any other person or persons whomsoever; and that, free and clear, and freed and absolutely acquitted, exonerated and discharged, or otherwise by the said *A. B.* and *M.* his wife respectively, their respective heirs, executors and administrators, well and effectually saved, defended, kept harmless and indemnified of, from and against all and all manner of former and other gifts, grants, bargains, sales, leases, mortgages, jointures, settlements, customary dower or freebench, annuities, uses, trusts, wills, intails, forfeitures, escheats, titles, troubles, charges and incumbrances whatsoever (save and except an indenture of lease hereinbefore granted of the said premises to *L. N.* of &c., for a term whereof — years were unexpired at — last,

precedent would create *vested* interests, so that the life estate of the wife in remainder might be conveyed by a surrender under the customary private examination as to her voluntary consent. And it has been held that a limitation to the husband and wife for their lives and the life of the survivor

of them, and after the decease of the survivor of them to the heirs of the survivor, creates *vested* interests in the husband and wife, not only for their joint lives, but for the life of the survivor; *Doe d. Dormer v. Wilson*, 4 Barn. & Ald. 303; ante, pt. 1, p. 135.

at and under the yearly rent of £— — —; and except also the customary rents, suits and services payable and to be performed in respect of the said hereditaments and premises to the lord or lady, lords or ladies of the manor of — aforesaid for the time being): And further, that the said *A. B.* and *M. B.* his wife, and his and her heirs, and all and every other persons and person having, or lawfully or equitably claiming or to claim, any estate, right, title, trust or interest in, to or out of the said customary or copyhold hereditaments and premises, or any of them, or any part thereof, (except in respect of the estates or interests hereinbefore excepted,) shall and will from time to time, and at all times hereafter, upon the request and at the proper costs and charges in the law of the said *E. F.*, or the person or persons for the time being intitled in possession to the same hereditaments and premises by virtue of the uses hereinbefore expressed and contained, make, do and execute, or cause and procure to be made, done and executed all and every such further and other lawful and reasonable acts, deeds, surrenders, conveyances and assurances in the law whatsoever for the further, better, more perfect and absolute surrendering, conveying, assuring and confirming all and singular the said customary or copyhold messuages or tenements, lands, hereditaments and premises hereinbefore limited and appointed, and covenanted to be surrendered, with their appurtenances, to the uses hereinbefore expressed and contained of and concerning the same, as by the said *E. F.*, or other the person or persons intitled in possession as aforesaid, or his, her or their counsel learned in the law, shall be devised or advised and required. In witness, &c.

(Bargain and sale of copyholds to a purchaser under a power given to executors.)

This indenture made the — day of —, in the — year &c., and in the year of our Lord —, between *A. B.* of &c., and *C. D.* of &c., (executors named in and appointed by the last will and testament of *E. F.*, late of &c., deceased,) of the one part, and *G. H.* of &c., of the other part: Whereas at two several courts baron or customary courts holden for the manor of —, in the county of —, on the — day of —, and the — day of —, the said *E. F.* was admitted on the surrender of *S. M.* of &c., and *R. S.* of &c., respectively, to certain customary or copyhold hereditaments lying within and holden of the same manor, and including the messuages, lands and hereditaments hereinafter described, and intended to be hereby bargained and sold, limited and appointed or otherwise assured, with their appurtenances, to hold to him the said *E. F.* and his heirs according to the custom of the said manor of —; and the said *E. F.*, after such respective admittances, duly surrendered all and singular the same customary or copyhold hereditaments to the uses of his will (s): And whereas the said *E. F.*, in and by his last will and testament in writing, bearing date the — day of —, gave and devised unto the said *A. B.*

(s) A surrender to will in such a case is advisable, if not indispensable, especially since the statute of wills, 1 Vict. c. 16, ante, pt. 1, p. 247.

and *C. D.*, and their heirs, all and singular his freehold manors, messuages, farms, lands and hereditaments, with their appurtenances, upon trust that they the said *A. B.* and *C. D.*, or the survivor of them, or the heirs of such survivor, should and did, as soon as conveniently might be after his decease, sell and dispose of the same freehold estates by public auction or private contract, for the most money that in their or his judgment could be had or gotten for the same: And the said testator did thereby authorize and empower the said *A. B.* and *C. D.*, and the survivor of them, at any time after his decease, in like manner as thereinbefore mentioned, to make sale and dispose of the customary or copyhold hereditaments therein mentioned to have been surrendered by him to the uses of his will as aforesaid, (including the messuages, lands and hereditaments hereinafter described and intended to be hereby bargained and sold, limited and appointed or otherwise assured,) with their appurtenances: And he the said testator did thereby declare that the receipt or receipts of the said *A. B.* and *C. D.*, or the survivor of them, should be a good and sufficient discharge and good and sufficient discharges to the purchaser or purchasers of his said freehold and customary or copyhold hereditaments, for all or so much of his, her or their respective purchase monies as should in such receipt or receipts be acknowledged or expressed to be received, and that such purchaser or purchasers, his, her or their heirs, executors, administrators or assigns should not afterwards be bound to see to the application of the same purchase monies, or be accountable for any loss, misapplication or nonapplication thereof, or any part thereof: And the said testator by his said will appointed the said *A. B.* and *C. D.* executors thereof: And whereas the said *E. F.* afterwards departed this life without revoking or in anywise altering his said in part recited will as far as related to his real estates so thereby devised, and authorized and directed to be sold as aforesaid, and the same was duly proved by the said *A. B.* and *C. D.* in the Prerogative Court of Canterbury on or about the — day of —: And whereas the said *A. B.* and *C. D.*, by virtue of the said power or authority in that behalf mentioned and contained in the above in part recited will of the said *E. F.* deceased, did lately contract and agree with the said *G. H.* for the sale to him of the messuages, lands and hereditaments hereinafter described, and the customary fee-simple and inheritance thereof in possession, free from incumbrances, (except such fines, rents, customs and services as are payable and to be performed to the lord or lady, lords or ladies of the manor of — aforesaid for the time being, for and in respect of the same premises respectively,) at or for the price or sum of £—: Now this indenture witnesseth, that for carrying into effect the said recited contract, and for and in consideration of the sum of £— of lawful money of the united kingdom of Great Britain and Ireland current in England, unto the said *A. B.* and *C. D.* in hand well and truly paid by the said *G. H.* at or before the sealing and delivery of these presents, the receipt whereof the said *A. B.* and *C. D.* do hereby acknowledge, and thereof and from the same and every part thereof do acquit, release, exonerate and discharge the said *G. H.*, his executors, administrators and assigns, and every of them for

ever by these presents, They the said *A. B.* and *C. D.*, in further pursuance and exercise of the said power or authority in this behalf given to them by the said in part recited will of the said *E. F.* deceased, and of all and every other powers and authorities, power and authority in anywise enabling them hereunto, have and each of them hath bargained and sold, limited, appointed, conveyed and assured, and by these presents do and each of them doth bargain and sell, limit, appoint, convey and assure unto the said *G. H.*, his heirs and assigns, All &c., together with all erections &c., and appurtenances whatsoever to the said hereditaments and premises belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof: *to have and to hold* all and singular the said customary or copyhold messuages, lands, hereditaments and premises mentioned or intended to be hereby bargained and sold, limited and appointed or otherwise assured, with the appurtenances thereof, unto and to the use of the said *G. H.*, his heirs and assigns for ever; but nevertheless according to the custom of the said manor of —, and subject to the rents, fines, customs and services payable and to be performed to the lord or lady, lords or ladies of the same manor for the time being for or in respect of the same premises or any part thereof; And the said *A. B.* and *C. D.*, for themselves respectively and their respective heirs, executors and administrators, but not jointly, or the one for the other of them, or the heirs, executors, administrators, acts or deeds of the other of them, do hereby covenant and declare with and to the said *G. H.*, his heirs and assigns, that they the said *A. B.* and *C. D.* have not, nor hath either of them, at any time heretofore, made, done, committed, executed nor wittingly suffered nor consented unto any act, deed, matter or thing whatsoever, whereby or by means whereof the said customary or copyhold messuages, lands, hereditaments and premises hereby bargained and sold, limited and appointed, or otherwise assured or intended so to be, or any part thereof respectively, are, is, can or may be charged, impeached, affected or incumbered in title, estate or otherwise howsoever. In witness, &c.

(Release of right by a person supposed to be intitled to admittance as customary heir of a surviving trustee.)

To all persons to whom these presents shall come, *A. B.* of &c., sendeth greeting: Whereas at a court baron or customary court holden for the manor of — in the county of —, on the — day of —, *C. D.* of &c., was admitted tenant of the copyhold hereditaments hereinafter described under and by virtue of the last will and testament of *E. F.* then late of &c., deceased, bearing date the — day of —, and of a surrender made by the said *E. F.* to the use of his said will, to hold to him the said *C. D.* and his heirs by copy of court roll at the will of the lord, according to the custom of the said manor: And whereas it is apprehended that the said *A. B.* is now legally intitled to be admitted to the said copyhold hereditaments hereinafter described as the customary heir of *G. H.* formerly of &c., deceased, who was the surviving trustee named in a certain surrender made

of the same hereditaments by *J. K.* of &c., deceased, at a court holden for the aforesaid manor on the — day of — : And whereas the said *A. B.*, upon the application and request of the said *C. D.*, hath consented and agreed to release and extinguish all such right, title and interest in and to the said copyhold hereditaments as may be now vested in him the said *A. B.* as the customary heir of the said *G. H.* deceased in such manner as is hereinafter mentioned : Now know ye, and these presents witness, that in pursuance and performance of the said recited agreement in this behalf, and in consideration of the sum of 10s. of lawful money &c., paid to the said *A. B.* by the said *C. D.* at the time of the execution hereof, the receipt whereof is hereby acknowledged, he the said *A. B.* hath remised, released and for ever quitted claim, and by these presents doth remise, release and for ever quit claim unto the said *C. D.*, his heirs and assigns, All the right, title, interest, trust, power, claim and demand whatsoever (if any) of him the said *A. B.* as the customary heir of the said *G. H.* deceased, in, to or out of All &c., and in, to or out of all erections, buildings, ways, &c., and appurtenances whatsoever to the said copyhold hereditaments and premises belonging or in anywise appertaining, to the end and intent that all such right, title, interest, claim or demand as aforesaid of him the said *A. B.* may for ever hereafter cease, determine and be merged and extinguished ; and that the said *C. D.*, his heirs and assigns may henceforth be deemed and considered as the legal and rightful tenant and tenants of the said copyhold hereditaments and premises to the lord or lady, lords or ladies for the time being of the manor of — aforesaid to all intents and purposes whatsoever. In witness whereof the said *A. B.* hath hereunto set his hand and seal this — day of —, in the year of our Lord —.

(Release of right to copyholds by customary heirs in gavelkind, and by the cestuy que trust, to a purchaser, who had been previously admitted under a surrender by devisees of real estates in trust for sale ; and covenants for the title).

This indenture of four parts made the — day of — in the — year &c., and in the year of our Lord —, between *C. D.* and *E. D.*, both of &c., (the two only brothers and heirs, according to the custom of the manor of — in the county of —, of *F. D.*, late of &c., deceased,) of the first part, *I. H.* of &c., (nephew of the said *F. D.* deceased, and cestuy que trust under his last will and testament of the monies arising from the sale thereby directed to be made of his real estates,) of the second part, *L. M.* of &c., and *N. O.* of &c., (devisees in trust of the real estates of the said *F. D.* deceased,) of the third part, and *P. R.* of &c. of the fourth part : Whereas the said *F. D.* being seized in fee simple of certain freehold hereditaments and being seized in fee simple according to the custom of the manor of — aforesaid of the copyhold hereditaments hereinafter described, with their appurtenances, but not having surrendered the same copyhold hereditaments to the uses of his will (*t*), in and by his last will and testament in

(*t*) But now see 1 Vict. c. 26, s. 3, and ante, pt. 1, p. 242, et seq.

writing bearing date the — day of —, after bequeathing several specific legacies, gave, devised and bequeathed unto and to the use of the said *L. M.* and *N. O.*, their heirs and assigns, All his real estates whatsoever and wheresoever, upon trust to sell and dispose of the same by public auction or private contract and in such manner as therein is mentioned: And the said testator did thereby direct and declare that the receipt and receipts of his said trustees or the survivor of them, his heirs or assigns, should be a good and sufficient discharge to the respective purchasers of his said real estates for all or any part of their respective purchase monies; and did further direct that the said trustees and the survivor of them, his executors and administrators, should stand possessed of the monies arising from such sales respectively, upon trust thereout to pay and discharge the aforesaid several legacies, and to pay the surplus of the same trust monies unto the testator's nephew the said *I. H.* for his absolute use and benefit: And whereas the said testator *F. D.* afterwards departed this life without revoking or altering his said will, which was duly proved in the — court of — on or about the — day of —: And whereas at a court baron or customary court holden for the said manor of — on the — day of — the said *L. M.* and *N. O.* were admitted to the copyhold hereditaments hereinafter described, to hold to them and their heirs according to the custom of the said manor of —, subject nevertheless to and upon the trusts of the said in part recited will of the said *F. D.* deceased: And whereas all the legacies bequeathed by the same will as aforesaid have been fully paid and discharged: And whereas the said *L. M.* and *N. O.*, as such devisees in trust as aforesaid, did lately contract and agree with the said *P. R.* for the sale to him of the copyhold hereditaments hereinafter described and the customary fee simple and inheritance thereof in possession, free from incumbrances, at or for the price or sum of £ —, and at a court baron or customary court held this day for the manor of — aforesaid, the said *L. M.* and *N. O.*, in consideration of the sum of £ — of lawful money &c., paid to them by the said *P. R.*, have surrendered into the hands of the lord of the said manor of —, according to the custom of the same manor, All &c., with the appurtenances to the same premises belonging or appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, trust and interest of the said *L. M.* and *N. O.* respectively, in, to or out of the same premises and every part thereof, to the use of the said *P. R.*, his heirs and assigns for ever, according to the custom of the said manor of —: And the said *P. R.* hath at the same court been duly admitted under and by virtue of the said last mentioned surrender to all and singular the said copyhold hereditaments and premises, with their appurtenances, to hold to him the said *P. R.* and his heirs, according to the custom of the manor of — aforesaid: And whereas upon the treaty for the sale of the said copyhold hereditaments and premises to the said *P. R.* as aforesaid, it was stipulated and agreed that the said *C. D.* and *E. D.*, as the customary heirs of the said *F. D.* deceased, and also the said *I. H.* should and would execute

such confirmatory assurance of the same premises (u), and that the said *I. H.* should and would enter into such covenants for the title thereof as are hereinafter mentioned and contained: Now this indenture witnesseth that in pursuance and performance of the said recited proposal and agreement in this behalf, and in consideration of the payment so made by the said *P. R.* of the sum of £— unto the said *L. M.* and *N. O.* as aforesaid; and also in consideration of the sum of 10s. a-piece of lawful money aforesaid unto the said *C. D.* and *E. D.* and the said *I. H.* in hand paid by the said *P. R.* at or before the execution hereof, the receipt whereof is hereby acknowledged; they the said *C. D.* and *E. D.* at the request of the said *I. H.*, (testified by his being a party to and sealing and delivering these presents,) and also the said *I. H.* have, and each and every of them hath remised, released and for ever quitted claim, and by these presents do, and each and every of them doth remise, release and for ever quit claim unto the said *P. R.*, his heirs and assigns, All the right, title, estate, interest, claim and demand whatsoever of them the said *C. D.*, *E. D.* and *I. H.* and each and every of them in and to the said copyhold messuages, hereditaments and premises hereinbefore described and every part thereof, to the end and intent to confirm and strengthen the title of the said *P. R.* in and to the same premises respectively: And the said *L. M.* and *N. O.* and also the said *C. D.* and *E. D.* do hereby for themselves severally and respectively, and their several and respective heirs, executors and administrators, but not jointly or the one for the others or other of them, or the heirs, executors, administrators, acts or deeds of the others or other of them, covenant and declare with and to the said *P. R.*, his heirs and assigns, that they the said *L. M.*, *N. O.*, *C. D.* and *E. D.* have not nor have nor hath any or either of them at any time heretofore made, done, committed, executed nor wittingly suffered nor consented unto any act, deed, matter or thing whatsoever whereby or by means whereof the said copyhold hereditaments and premises hereinbefore described and so surrendered to the use of the said *P. R.* his heirs and assigns as aforesaid, or any of them, or any part thereof, are, is, can or may be charged, impeached or incumbered in title, estate or otherwise howsoever: And the said *I. H.* for himself, his heirs, executors and administrators doth covenant, promise, grant and agree with and to the said *P. R.*, his heirs and assigns, by these presents in manner following, that is to say, that (for and notwithstanding any act, deed, matter or thing whatsoever by the said *L. M.* and *N. O.*, or the said *C. D.*, *E. D.* and *I. H.*, any or either of them, or by the said *F. D.* deceased, at any time heretofore made, done, committed, executed or wittingly suffered to the contrary) the said *L. M.* and *N. O.* or one of them had good right, full power and lawful and absolute authority to surrender and assure all and singular the aforesaid copyhold messuages, hereditaments and premises, with their appurtenances, to the use of the said *P. R.*, his heirs and assigns in manner aforesaid and according to the true intent and meaning of the surrender so made thereof by them the said *L. M.* and

(u) See the last note.

N. O. as aforesaid and of the parties to these presents: And moreover that it shall and may be lawful to and for the said *P. R.*, his heirs and assigns, from time to time and at all times for ever hereafter peaceably and quietly to enter into and upon, have, hold, occupy, possess and enjoy all and singular the said copyhold messuages, hereditaments and premises hereinbefore described and so surrendered and hereby released as aforesaid, with their appurtenances, and to receive and take the rents, issues and profits thereof to and for his and their own use and benefit, without any lawful let, suit, trouble, molestation, eviction, ejection, interruption or disturbance whatsoever of, from or by the said *L. M.* and *N. O.* or the said *C. D.*, *E. D.* and *I. H.*, any or either of them, their, any or either of their heirs, or of, from or by any other person or persons whomsoever lawfully or equitably and rightfully claiming or to claim by, from, through or under them, any or either of them, or the said *F. D.* deceased; and that, free and clear and freed and absolutely acquitted, exonerated and discharged or otherwise by the said *I. H.*, his heirs, executors and administrators well and effectually saved, defended, kept harmless and indemnified of, from and against all former and other gifts, grants, bargains, sales, leases, mortgages, settlements, dower or freebench, rents, annuities, uses, trusts, wills, intails, forfeitures, escheats, and all and singular other estates, titles, charges and incumbrances whatsoever had, made, done, committed, executed, or wittingly permitted or consented unto by the said *F. D.* deceased or the said *L. M.*, *N. O.*, *C. D.*, *E. D.* and *I. H.*, any or either of them, or any person or persons claiming by, from, through or under them, any or either of them or by or with their, any or either of their privity, consent or procurement (save and except the customary fines, rents, suits and services payable and to be performed in respect of the same hereditaments and premises to the lord or lady, lords or ladies of the manor of — aforesaid for the time being): And further that the said *C. D.* and *E. D.* and the said *I. H.* respectively, and their respective heirs, and all and every other persons and person having or lawfully or equitably claiming or to claim any estate, right, title or interest in, to or out of the said customary or copyhold hereditaments and premises, or any of them or any part thereof, by, from, through, under or in trust for him the said *I. H.* or the said *F. D.* deceased, shall and will from time to time and at all times hereafter, upon the request and at the proper costs and charges in the law of the said *P. R.*, his heirs or assigns, make, do and execute or cause and procure to be made, done and executed all and every such further and other acts, deeds, surrenders, conveyances and assurances in the law whatsoever for the further, better, more perfect and absolute surrendering, conveying, assuring and confirming all and singular the said copyhold messuages, hereditaments and premises hereinbefore described and so surrendered and hereby released as aforesaid, with their appurtenances, to the use of the said *P. R.*, his heirs and assigns for ever, or as he or they shall direct or appoint, and according to the custom of the manor of — aforesaid, as by the said *P. R.*, his heirs or assigns, or his or their counsel learned in the law, shall be lawfully and reasonably devised or advised and required. In witness, &c.

(Declaration of trust of copyholds for lives by the nominees of a purchaser.)

This indenture made the — day of —, in the year of our Lord —, between *I. K.* of &c., and *L. M.* of &c., of the one part, and *G. H.* of &c., of the other part: Whereas at a court baron or customary court holden for the manor of —, on the — day of —, the said *G. H.*, and at his request *C. D.* of &c., and *E. F.* of &c., who then held the customary or copyhold hereditaments hereinafter described for the term of their lives and the life of the longest liver of them successively, duly surrendered into the hands of *A. Z.* esquire, lord of the aforesaid manor, All &c., with their appurtenances, to the intent that the lord might re-grant the same premises to the said *G. H.* and the said *I. K.* and *L. M.*, for the lives of them the said *G. H.*, *I. K.* and *L. M.*, and the life of the longest liver of them successively, according to the custom of the said manor; and accordingly at the same court the said *A. Z.* granted seizin of the same premises unto the said *G. H.*, *I. K.* and *L. M.*, by the rod, according to the custom of the said manor, to hold the same with the appurtenances to the said *G. H.*, *I. K.* and *L. M.*, for the term of their lives and the life of the longest liver of them successively, by copy of court roll, at the will of the lord, according to the custom of the said manor; and the said *G. H.* was at the same court admitted tenant accordingly, and paid to the lord for a fine on such regrant and admittance the sum of £—: And whereas the said *G. H.* was the sole purchaser of the aforesaid customary or copyhold hereditaments and premises, and the names of the said *I. K.* and *L. M.* were used in the aforesaid surrender and regrant in trust only for the said *G. H.*, his executors, administrators and assigns, as they the said *I. K.* and *L. M.* respectively do hereby admit and acknowledge: Now this indenture witnesseth, and in consideration of the premises, the said *I. K.* and *L. M.*, for themselves respectively, their respective heirs, executors and administrators, but not jointly or the one for the other of them, or the heirs, executors or administrators of the other of them, do hereby covenant, promise and declare with and to the said *G. H.*, his executors, administrators and assigns, that they the said *I. K.* and *L. M.* respectively, and all and every persons and person claiming or to claim, by, from, through or under them or either of them, shall and will at any time or times hereafter, upon the request and at the costs and charges of the said *G. H.*, his executors, administrators or assigns, apply for and receive and take admittance according to the custom of the aforesaid manor to all and singular the said customary or copyhold hereditaments and premises hereinbefore described, with their appurtenances, for the estate, term and interest therein to which they respectively may be intitled by virtue of the said recited surrender and regrant; and at the like request, costs and charges duly surrender the same premises to the use of such person or persons and in such manner as the said *G. H.*, his executors, administrators or assigns shall direct or require; and in the meantime and until such last mentioned surrender or surrenders respectively shall be made, and ad-

mittance or regrant be had and obtained by virtue thereof, shall and will stand possessed of the same customary or copyhold hereditaments and premises, with their appurtenances, for all such term, estate and interest therein as he or they respectively may be entitled to as aforesaid, in trust only for the said *G. H.*, his executors, administrators and assigns; and shall and will pay, apply and dispose of the rents, issues and profits thereof accordingly: And the said *G. H.* for himself, his heirs, executors and administrators, doth hereby covenant, promise and agree with and to the said *I. K.* and *L. M.* respectively, their respective heirs, executors and administrators, that he the said *G. H.*, his heirs, executors and administrators, shall and will at all times hereafter well and effectually save, defend, keep harmless and indemnified, the said *I. K.* and *L. M.* respectively, their respective executors and administrators, and their and every of their lands and tenements, goods and chattels, of, from and against the payment of any fines, quit rents, sum or sums of money, and the rendering of any heriot or heriots, which shall at any time or times hereafter accrue to the lord or lady, lords or ladies for the time being of the manor of — aforesaid; and of, from and against all actions, suits, losses, costs, charges, damages and expenses whatsoever, which can, shall or may or could or might be commenced or prosecuted against or be incurred or sustained by the said *I. K.* and *L. M.* respectively, their respective executors or administrators, by reason or means of their names being so used as *cestui que vies* in the said in part recited surrender and regrant as aforesaid, or anywise in relation thereunto: Provided always and it is hereby agreed and declared by and between all the said parties hereto, that the said *I. K.* and *L. M.* respectively, their respective executors and administrators, shall not be responsible the one for the other or others of them, for the receipts, payments, acts, deeds or wilful defaults of the other or others of them; and that they respectively shall not be charged nor chargeable with nor accountable for any monies other than such as they respectively shall actually receive, nor with nor for any loss or damage which may happen by placing all or any part of the monies to be received by them or either of them as such trustees respectively as aforesaid, in any bank or banker's hands or elsewhere for safe custody, nor otherwise in relation to the trusts aforesaid, so that the same happen without his or their respective wilful neglect or default. In witness &c.

(Grant of an annuity by a copyholder seized for an estate for life carved out of the inheritance.)

This indenture made the — day of &c., between *A. B.* of &c., of the first part, *C. D.* of &c., of the second part, and *E. F.* of &c., of the third part: Whereas the said *A. B.* is seized of the lands and hereditaments hereinafter described, for an estate for the term of his life according to the custom of the manor of —, in the county of —: And whereas the said *A. B.* hath contracted and agreed with the said *C. D.* for the sale to him of an annuity or clear yearly sum of £— of lawful money &c., to be paid to the said *C. D.*, his executors, administrators and assigns for and during

the natural life of the said *A. B.*, and up to the day of his decease, at or for the price or sum of £——, the said annuity to be secured upon and out of the said customary or copyhold lands and hereditaments in such manner as hereinafter is mentioned, and to be further secured by the covenant of the said *A. B.* hereinafter contained, and by the warrant of attorney of the said *A. B.* hereinafter recited, and a judgment to be thereupon entered up as hereinafter mentioned: And whereas upon the treaty for the sale of the said annuity it was stipulated that the same should be repurchasable upon the terms hereinafter expressed, and that the costs and expenses attending the examination of the title to the said estate, and of preparing and perfecting the securities for the same annuity, and of preparing and inrolling a memorial or memorials thereof, should be borne and paid by the said *A. B.*: And whereas the said *A. B.* in pursuance of the said agreement in that behalf hath executed a certain deed poll or warrant of attorney bearing even date with these presents, authorizing *G. H.* and *I. K.*, attorneys of her Majesty's Court of Queen's Bench at Westminster, jointly and severally, or any other attorney of the same court, as of — term now last past, — term next ensuing or any subsequent term, to appear for him the said *A. B.* in the said court in an action of debt for the sum of £—— for money borrowed, at the suit of the said *A. B.*, and thereupon to confess judgment by *nihil dicit* or otherwise for that sum, together with costs of suit: Now this indenture witnesseth that in pursuance and further performance of the said recited contract or agreement and for and in consideration of the sum of £—— of lawful money aforesaid unto the said *A. B.* in hand well and truly paid by the said *C. D.* in notes of the governor and company of the bank of England, payable to bearer on demand, the receipt of which said sum of £—— the said *A. B.* doth hereby acknowledge, and thereof and from the same and every part thereof doth acquit, release and discharge the said *C. D.*, his heirs, executors, administrators and assigns for ever by these presents, he the said *A. B.* for himself, his heirs, executors and administrators doth hereby covenant, promise and agree with and to the said *C. D.*, his executors, administrators and assigns, that he the said *A. B.* shall and will well and truly pay or cause to be paid unto the said *C. D.*, his executors, administrators, or assigns, for and during the natural life of the said *A. B.*, an annuity or yearly sum of £—— of lawful money aforesaid, by four equal quarterly payments on the several days following, that is to say, the — day of —, the — day of —, the — day of —, and the — day of —; the said annuity to be paid at the entrance of the common dining hall of the Inner Temple, London, between the hours of ten and eleven in the forenoon, free and clear of and from all taxes and deductions whatsoever, parliamentary or otherwise, and the first quarterly payment thereof to be made on the — day of — now next ensuing: And also that the heirs, executors or administrators of the said *A. B.* shall and will within one calendar month next after his decease well and truly pay or cause to be paid to the said *C. D.*, his executors, administrators or assigns, a proportional part of the said annuity from the quarterly day of payment next preceding the de-

cease of the said *A. B.*, or from the day of the date of these presents if he shall happen to die before the first quarterly payment shall become due, up to and until the day of his death: And this indenture also witnesseth that in further pursuance and performance of the said recited contract or agreement, and for the consideration hereinbefore mentioned, and also in consideration of the sum of 10*s.* of lawful money aforesaid unto the said *A. B.* in hand paid by the said *E. F.* at or before the execution hereof, the receipt whereof is hereby acknowledged, he the said *A. B.* for himself, his heirs, executors and administrators, at the request and by the direction of the said *C. D.*, (testified by his sealing and delivering these presents,) doth hereby covenant, promise and agree with and to the said *E. F.*, his heirs and assigns, that he the said *A. B.* shall and will at his own costs and charges, at the next or some subsequent general court baron or customary court to be holden for the manor of — aforesaid, or at any time hereafter out of court, upon the request of the said *C. D.*, his executors, administrators or assigns, or of the said *E. F.*, his heirs or assigns, well and effectually surrender or cause to be surrendered into the hands of the lord or lady, lords or ladies of the said manor for the time being, and according to the custom of the same manor, All, &c. with their appurtenances, and the reversion &c., and all the estate &c., to the use of the said *E. F.*, his heirs and assigns during the life of the said *A. B.*, according to the custom of the said manor of —, upon and for the trusts, intents and purposes hereinafter expressed and declared concerning the same premises, that is to say, upon trust that the said *E. F.*, his heirs and assigns, do and shall pay the rents, issues and profits of the said customary or copyhold hereditaments and premises unto the said *A. B.* and his assigns, or otherwise permit and suffer him and them to receive and take the same, in the mean time and until some default shall be made in payment of the said annuity or yearly sum of £—— hereby intended to be secured, or some part thereof, at or on the days or times and in the manner hereinbefore limited and appointed for payment of the same: And upon further trust that in case the said annuity or yearly sum or any part thereof shall happen to be behind and unpaid by the space of twenty-one days next over or after any of the said days whereon the same is so appointed and ought to be paid as aforesaid, (being lawfully demanded,) then and so often the said *E. F.*, his heirs or assigns, shall from time to time by and out of the rents and profits of the aforesaid hereditaments and premises, and if necessary by making distresses upon or bringing actions against all or any of the tenants or occupiers of the same premises for recovery of the same rents and profits, or by demise, mortgage or absolute sale (such sale or sales to be either by public auction or private contract) of all or any part or parts of the said lands, hereditaments and premises, for all or any part of the estate for life therein of the said *A. B.*, or by such other ways and means as to the said *E. F.*, his heirs and assigns shall seem meet, raise and levy such sum and sums of money as will be sufficient to pay and satisfy the said annuity or yearly sum of £——, or so much thereof as shall from time to time be in arrear and unpaid, and also all such costs, charges and expenses as the said *C. D.*, his executors, administrators or assigns, or the said *E. F.*, his heirs or assigns, shall pay, sustain or be put

unto by reason of the non-payment of the said annuity or yearly sum at or on the days and in the manner hereinbefore appointed for payment thereof, or the performance of the trusts hereby created, and do and shall pay and apply the monies so to be levied and raised in or towards payment or satisfaction of the said annuity and all such costs, charges and expenses as aforesaid accordingly, and shall and do pay the residue and surplus of the monies so to be levied or raised, and of the rents and profits of the said hereditaments and premises, after full payment and satisfaction of the said annuity or yearly sum of £—— and all arrears thereof, and all such costs charges and expenses as aforesaid, unto the said *A. B.* and his assigns for his or their own use and benefit: and it is hereby agreed and declared between the parties hereto, that the receipt and receipts of the said *E. F.*, his heirs or assigns, shall be a good and sufficient discharge and good and sufficient discharges to the tenants and occupiers of the said hereditaments and premises for the rents, issues and profits thereof, and to any such mortgagee or mortgagees, purchaser or purchasers of all or any part of the same premises as aforesaid, for his, her or their purchase or mortgage monies, or for so much thereof respectively as shall in such receipt or receipts be acknowledged or expressed to be received, and that the person or persons paying the same monies and taking such receipt or receipts for the same as aforesaid shall not afterwards be bound to see to the application thereof, nor be responsible for the loss, misapplication or non-application thereof or any part thereof: Provided also that the said *E. F.*, his heirs or assigns, shall not be charged nor chargeable with nor responsible for any monies other than such as he or they shall actually receive by virtue of the trusts hereby in him and them reposed, nor with nor for any loss or damage which may happen by placing all or any part of the same trust monies in any bank or bankers' hands or elsewhere for safe custody, nor anywise in or about the execution of the aforesaid trusts without his or their wilful neglect or default: And the said *A. B.*, for himself, his heirs, executors and administrators doth covenant, promise and agree with and to the said *C. D.*, his executors, administrators and assigns, and also with and to the said *E. F.*, his heirs and assigns, (separately and apart from the said *C. D.*, his executors, administrators and assigns, and so far as relates to the title, possession and further assurance of the said customary or copyhold hereditaments and premises,) by these presents in manner following, that is to say, that he the said *A. B.* is and standeth lawfully and rightfully seized of the said lands, hereditaments and premises for an estate for the term of his life according to the custom of the manor of —— aforesaid, without any condition, restraint, or other cause, matter or thing whatsoever to change, alter, revoke, make void, lessen or determine the same: And also that he the said *A. B.* hath good right to surrender and assure the same lands, hereditaments and premises to the use of the said *E. F.*, his heirs and assigns, upon the trusts and in manner aforesaid, and according to the true intent and meaning of the covenant in that behalf hereinbefore contained: And moreover that the said *E. F.*, his heirs and assigns, shall and may henceforth, for and during the life of the said *A. B.*, peaceably and quietly enter into and upon,

have, hold, occupy and enjoy all and singular the same customary or copyhold hereditaments and premises with their appurtenances, and receive and take the rents and profits thereof upon the trusts aforesaid, free and clear of and from all former and other gifts, grants, surrenders, mortgages, leases, rents, annuities, and all other titles, troubles, charges and incumbrances whatsoever: And further that he the said *A. B.*, and all and every persons and person having or lawfully or equitably claiming or to claim any estate, right, title, trust or interest in, to or out of the said hereditaments and premises or any part thereof, shall and will upon every reasonable request of the said *C. D.*, his executors, administrators or assigns, or of the said *E. F.*, his heirs or assigns, but at the costs and charges of the said *A. B.*, make, do and execute or cause and procure to be made, done and executed all and every such further and other acts, assurances, matters and things whatsoever for the better and more effectually charging the said customary or copyhold lands, hereditaments and premises with the payment of the said annuity or yearly sum of £——, and for the further and more effectual limiting and assuring the same premises to the use of the said *F. F.*, his heirs and assigns, upon the trusts aforesaid, and according to the true intent and meaning of these presents, as by the said *C. D.*, his executors, administrators or assigns, or the said *E. F.*, his heirs or assigns, or his, their or any of their counsel learned in the law shall be lawfully and reasonably devised or advised and required: And moreover that he the said *A. B.* shall not nor will at any time or times hereafter depart from nor leave the kingdom on military service or otherwise, without first giving to the said *C. D.*, his executors, administrators or assigns, one calendar month's notice thereof in writing, under the hand of him the said *A. B.*: And that the said *A. B.* shall and will from time to time and at all times during his life, at the request of the said *C. D.*, his executors, administrators or assigns, appear in person, as often as there shall be occasion, upon having reasonable notice, at any office or place of insurance, or send to such office notice of the place of abode of him the said *A. B.*, and, if necessary, vouchers or certificates of the state of his health, in order that the said *C. D.*, his executors, administrators and assigns, may be enabled to insure his and their interest in the life of the said *A. B.*, in such manner as he or they may think advisable. [*When the estate is large, it may here be desirable to insert the ordinary form of an appointment of a receiver of the rents.*] And this indenture further witnesseth, and it is hereby declared and agreed by and between the said parties to these presents, that the judgment to be entered up against the said *A. B.* as aforesaid upon the said recited warrant of attorney, is intended and agreed to be a further security to the said *C. D.*, his executors, administrators and assigns, for the said annuity or yearly sum of £——, and such proportionate part thereof as aforesaid, but that no execution or executions shall be issued or taken upon such judgment, unless and until the said annuity or yearly sum or some part thereof or such proportionate part thereof shall be in arrear for the space of thirty-one days next after the same shall become due and payable: And that in case the said annuity or yearly sum of £—— or any part thereof or such

proportionate part thereof shall be behind and unpaid by the space of thirty-one days, then and in such case and so often as the same shall happen, it shall and may be lawful to and for the said *C. D.*, his executors, administrators or assigns, to sue out such execution or executions, upon or by virtue of the said judgment, as he or they shall think fit, for the recovery of the arrears of the said annuity, and all costs and expenses which he or they shall bear, pay or sustain for or by reason of the non-payment thereof. And it is hereby further declared and agreed, that the said *C. D.*, his executors, administrators or assigns shall, by and with and out of the money to be recovered or raised by the ways and means last mentioned, pay and satisfy himself and themselves all arrears of the said annuity or yearly sum of £—, and all costs, charges and expenses occasioned by non-payment thereof, and shall pay the residue and surplus of the monies so to be recovered or raised to the said *A. B.*, his executors, administrators or assigns, for his and their own use and benefit. Provided always, and it is hereby agreed and declared by and between the said parties to these presents, that it shall not be necessary for the said *C. D.*, his executors, administrators or assigns, to revive or cause to be revived the said judgment, or do any act matter or thing to keep the same on foot, notwithstanding the same judgment shall have been entered of record for the space of one year or upwards; and that the said *A. B.*, his heirs, executors or administrators, shall not nor will have or take nor attempt by any ways or means whatsoever to have or take any advantage of the want of reviving or keeping the said judgment on foot; and that if he or they shall attempt so to do by action or other proceeding or proceedings whatsoever, this present agreement shall or may be pleaded or shown in bar thereto, any rule or practice of the Court of Queen's Bench to the contrary thereof in anywise notwithstanding. Provided nevertheless, that after the decease of the said *A. B.*, and full payment to the said *C. D.*, his executors, administrators and assigns of the said annuity or yearly sum of £— and all arrears thereof up to the day of the decease of the said *A. B.*, and of all such costs, charges and expenses as aforesaid, the said *C. D.*, his executors, administrators or assigns, shall and will, at the request, costs and charges of the heirs, executors or administrators of the said *A. B.*, acknowledge satisfaction upon the record of the said judgment in due form of law, or do any further or other reasonable act or acts, matters or things that may then be required in regard thereto, so that for the doing thereof the said *C. D.*, his executors, administrators or assigns, be not compellable to travel from his or their usual place or places of abode. Provided always, and it is hereby declared and agreed by and between the said *C. D.* and the said *A. B.*, that in case the said *A. B.* shall at any time after the expiration of two years, to be computed from the day of the date of these presents, be desirous of re-purchasing the said annuity or yearly sum of £—, and shall give to the said *C. D.*, his executors, administrators or assigns, three calendar months' notice in writing of such desire, and upon the expiration of the said notice or at any time afterwards, and on giving such notice as aforesaid, shall well and truly pay or cause to be paid to the said *C. D.*,

his executors, administrators or assigns, the full sum of £——, being the consideration money for the purchase of the said annuity, and do and shall also well and truly pay or cause to be paid to the said *C. D.*, his executors, administrators or assigns, all sums of money that shall then be due to him or them for or on account of the said annuity of £——, and also a proportionate part of the same annuity up to and inclusive of the day of re-purchasing the same, and shall also well and truly pay or cause to be paid to the said *E. F.*, his heirs or assigns, all sums of money which shall then be due to him or them for or on account of such costs, charges and expenses as shall have been advanced, paid or incurred by him or them in the execution of the trusts aforesaid, then and in that case the said *C. D.*, his executors administrators or assigns, shall and will accept and take the said sum of £—— as and for the price of re-purchase, and in satisfaction and full discharge of the said annuity of £——, and upon the request and at the costs and charges of the said *A. B.*, his heirs executors or administrators, the said *C. D.*, his executors administrators or assigns, shall and will acknowledge satisfaction upon the record of the said judgment, and then and in such case the said annuity of £——, and the several covenants and agreements powers and remedies hereinbefore contained for payment and security of the said annuity, shall cease and be void to all intents and purposes whatsoever; and then also the said *E. F.*, his heirs or assigns, shall and will at the request, costs and charges of the said *A. B.*, re-surrender and re-assure all and singular the said customary or copyhold hereditaments and premises, with their appurtenances, to the use of the said *A. B.* and his assigns for his life, subject nevertheless and without prejudice to any such sales, mortgages or demises which may be made at any time hereafter under and by virtue of the trusts hereinbefore contained; and then also the said *C. D.*, his executors administrators or assigns, shall and will, at the like request costs and charges of the said *A. B.*, assign and transfer to him the said *A. B.*, his executors administrators or assigns, for his and their own use and benefit, any policy or policies of insurance which may have been effected by the said *C. D.* upon the life of the said *A. B.* in connexion with this present security. In witness &c. (x)

(x) It would be necessary to register a memorial of the above deed, in the form given in the 53 Geo. 3, c. 141, and by which the act of 17 Geo. 3, c. 26, is repealed.

As the clause in the latter act requiring the consideration for the annuity, and the name of the person by whom or on whose behalf it is advanced, to be stated in every instrument forming part of the security, is not repeated in the act 53 Geo. 3, it would be sufficient to state in the surrender that the same was made by *A. B.* in consideration of £—— paid to him by *C. D.*, and upon the trusts of a

certain deed made between &c., by which an annuity was granted by *A. B.* to *C. D.* for the life of the said *A. B.* If, however, *C. D.* acted as trustee only for another person, it would then be necessary to state the name &c., of such person in the surrender, *and also in the warrant of attorney*, otherwise the instrument is rendered void by the 4th sect. of the act of 53 Geo. 3.

The *ad valorem* duty, the author apprehends, is to be affixed to the surrender, as that is declared by the acts of 48 Geo. 3, c. 149, and 55 Geo. 3, c. 184, (post,) to be the principal instrument.

(Power to enable successive tenants for life of a manor to grant licences to demise to copyholders) (y).

Provided always, and it is hereby further declared and agreed by and between all the said parties to these presents, that it shall and may be lawful to and for the said *A. B.* and *C. D.* respectively, when and as they respectively shall be in the actual possession of the aforesaid manor of —, by virtue of and under the limitations hereinbefore contained, to grant to all or any of the customary or copyhold tenants of the same manor any licence or licences to demise or lease all or any part of the lands, tenements or hereditaments holden by them respectively by copy of court roll of the said manor, so nevertheless that such licence or licences respectively shall not exceed the term of — years from the time of granting the same, and that the said *A. B.* and *C. D.* respectively do take only the usual and accustomed fines, and do conform in all other respects to the custom of the said manor in relation to the like grants or licences.

(Proviso in a will authorizing trustees to grant leases of copyholds, under similar restrictions to those previously imposed with respect to freeholds.)

Provided always, and my will is, that it shall be lawful for the said *A. B.* and *C. D.*, and the survivor of them, his heirs and assigns, by and with the consent of the lord or lady, lords or ladies of the said manor of — for the time being, by indenture or indentures to demise and lease all or any part of the said customary or copyhold lands hereditaments and premises hereinbefore devised, for such and the like term or terms of years, in possession and not in reversion, or by way of future interest, and under and subject to the like restrictions and conditions as I have hereinbefore directed and provided with respect to the freehold estates adjoining or contiguous to the same customary or copyhold hereditaments respectively; *provided nevertheless*, that the person or persons beneficially intitled to the rents and profits of the said customary or copyhold hereditaments in possession for the time being, if he, she or they shall have attained the age of twenty-one years, shall signify his, her or their consent and approbation to every such lease so to be granted as aforesaid by some writing or writings under his, her or their hand and seal, or hands and seals, to be attested by two or more credible witnesses.

(Lease by trustees and the cestui que trusts to commit a forfeiture of copyholds, in order to bar an equitable estate tail) (z).

This indenture made the — day of —, &c., between *R. S.* of &c., and *T. W.* of &c., [*the trustees*,] of the first part, *I. K.* of &c., [*equitable*

(y) Ante, pt. 1, p. 458.

(x) See ante, pt. 1, p. 57, et seq.

It was usual in these cases for the homage to present the lease creating the forfeiture in the terms of the subjoined precept, and

to enter on the court rolls such presentment, and also a presentment of the precept and the bailiff's return, and that proclamation was thereupon made for the late tenant, or other person who could

tenant for life,] of the second part, *I. L.* of &c., and *E. L.*, [*the equitable tenant in tail in remainder,*] the wife of the said *I. L.*, of the third part, and *Y. Z.* of &c., of the fourth part, witnesseth, that to the intent that a voluntary forfeiture may be committed, and a seizure made of the messuages lands and hereditaments hereinafter described, with their appurtenances, according to the custom of the manor of —, in the county of —, in order to dock, bar and extinguish the estate in tail general to which the said *E. L.* is now equitably intitled of and in the same hereditaments, and all remainders and reversions thereupon expectant or depending, and that an estate by copy of court roll, according to the custom of the said manor, may be re-granted to and vested in the said *R. S.* and *T. W.* and their heirs upon and for the trusts, intents and purposes hereinafter expressed, and in consideration of the sum of 10s. a-piece of lawful money &c., to the said *R. S.*, *T. W.*, *I. K.*, and *I. L.* and *E. L.* his wife, in hand paid by the said *Y. Z.* at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and also for and in consideration of the rent and reservations hereinafter contained, and for divers other good causes and considerations the said *R. S.*, *T. W.*, *I. K.*, and *I. L.* and *E. L.* his wife hereunto especially moving, they the said *R. S.* and *T. W.*, and the said *I. K.* and *I. L.* and *E. L.* his wife, (she the said *E. L.* being first examined separately and apart from her said husband by *J. S.* esquire, chief steward of the said manor, and freely and voluntarily consenting thereto,) have and each and every of them hath demised, leased, granted and to farm letten, and by these presents do and each and every of them doth demise, lease, grant and to farm let unto the said *Y. Z.*, his executors, administrators and assigns, All &c., with their and every of their appurtenances, to have and to hold the said messuages, lands, and all and singular other the hereditaments and premises hereinbefore described and hereby demised and leased, or intended so to be, with their appurtenances, unto the said *Y. Z.*, his executors, administrators and assigns, from the day next before the day of the date of these presents, for and during and until the full end and term of seven years thence next ensuing, and fully to be complete and ended: Yielding and paying therefore yearly and every year during all the said term unto the said *R. S.* and *T. W.*, their heirs and assigns, the yearly rent or sum of 5s. on the feast-day of the birth of our Lord Christ, clear of all taxes and deductions whatsoever. And it is hereby declared and agreed, that the forfeiture intended to be committed by this present demise or lease is for the purpose and to the intent to bar such equitable estate tail of the said *E. L.* as aforesaid, and all remainders and reversions thereupon expectant or depending of and in the aforesaid

show title, to come into court and pay a fine, who should be heard: but that no person appeared, "*wherefore default is recorded:*" and the copy of these presentments was called the *inquisition* of the homage. The lands were afterwards re-

granted according to the desire of the parties.

[But see the provisions of the act of 3 & 4 Will. 4, c. 74, for effecting a bar of equitable estates tail of copyholds, ante, 751, n. (i), 776, 777, 848. Vide also extracts from that stat. post.]

customary or copyhold messuages, lands, hereditaments and premises, and that the same premises may be re-granted to and vested in the said *R. S.* and *T. W.*, their heirs and assigns, upon the trusts, intents and purposes expressed and declared in an indenture bearing date &c., and made between &c., (other than the trusts for the benefit of the said *E. L.* and the heirs of her body, and the subsequent trusts therein contained,) and subject thereto upon and for the trusts, intents and purposes expressed and declared concerning the same premises in and by an indenture bearing date &c., and made between &c., (being the settlement executed previous to and in contemplation of the marriage then intended and since had and solemnized between the said *I. L.* and the said *E. L.* now his wife). In witness &c.

(Precept of seizure by reason of the above forfeiture) (a).

The manor of — }
in the county of — } To *W. Y.* bailiff of the said manor.

Whereas at a general court baron or customary court held this day for the said manor of —, it is found and presented by the homage that *R. S.* and *T. W.*, *I. K.* and *I. L.* and *E.* his wife, by their indenture of demise and lease duly executed, bearing date &c., and in consideration of the sum of 10s. a-piece in hand paid by *Y. Z.* of &c., and for other the considerations in the same indenture expressed, did demise, lease, grant and to farm let unto the said *Y. Z.* All &c., with their appurtenances, to hold unto the said *Y. Z.*, his executors, administrators and assigns from the day next before the day of the date of the same indenture of lease, for and during and unto the full end and term of seven years thence next ensuing, and fully to be complete and ended; by reason whereof all and singular the said messuages, lands, hereditaments and premises, being respectively customary or copyhold hereditaments, lying within and holden of the said manor, have become forfeited to the lord of the same manor and ought to be seized to his use.

These are therefore to command you the said *W. Y.*, that you forthwith take with you two customary or copyhold tenants of the said manor, and enter into and upon the aforesaid messuages, lands, hereditaments and premises, or some part thereof in the name of the whole, and seize the same into the hands of the lord of the said manor according to the custom and usage thereof, and that you thereupon make return to me of this precept, together with the names of the tenants in whose presence you make such seizure, and the clear yearly value of the premises. Given under my hand and seal this — day of —, in the year of our Lord —.

J. S., steward. (L. S.)

(The bailiff's return indorsed.)

By virtue of the within written precept to me directed, I have, in the presence of *C. D.* and *E. F.*, two customary or copyhold tenants of the

(a) See form of precept to seize on forfeiture in consequence of the non-appearance of the heir &c., under a special

custom, or by an attainder of felony, &c., ante, 829.

within mentioned manor of —, seized all and singular the within described messuages, lands and hereditaments into the hands of the lord of the same manor, according to the custom and usage thereof, as commanded by the same precept. And I do hereby certify that the aforesaid premises are of the yearly value of £—, or thereabouts.

W. Y., bailiff.

(Deed of enfranchisement.)

This indenture made the — day of &c., between A. Z. of &c., lord of the manor of —, in the county of —, of the one part, and C. D. of &c., one of the copyhold tenants of the aforesaid manor, of the other part: Whereas the said A. Z. is seized of and well intitled to the said manor of — for an estate of inheritance in fee simple in possession, free from all incumbrances: And whereas the said C. D., at a court baron or customary court holden for the aforesaid manor on the — day of —, was admitted, on the surrender of E. F. of &c., to all and singular the copyhold messuages, lands and hereditaments hereinafter described and intended to be hereby granted, released and enfranchised, with their appurtenances, to hold the same unto him the said C. D. and his heirs, by copy of court-roll, at the will of the lord, according to the custom of the manor of — aforesaid, [by and under the payment of the ancient yearly rent of £—, and the performance of all other the duties and services due and of right accustomed for and in respect of the same copyhold hereditaments and premises]: And whereas the said C. D. hath contracted and agreed with the said A. Z. for the enfranchisement of the said copyhold messuages, lands and hereditaments hereinafter described, [subject as hereinafter mentioned,] at or for the price or sum of £—: Now this indenture witnesseth, that in pursuance and performance of the said recited contract or agreement, and for and in consideration of the sum of £— of lawful money of the united kingdom of Great Britain and Ireland current in England unto the said A. Z. in hand well and truly paid by the said C. D. at or before the sealing and delivery of these presents, the receipt whereof the said A. Z. doth hereby acknowledge, and of and from the same and every part thereof doth acquit, release, exonerate and discharge the said C. D. his heirs, executors, administrators and assigns, and every of them for ever by these presents, he the said A. Z., by force and virtue of the act of parliament passed in the 4th year of the reign of her said present Majesty, intituled “An Act for rendering a Release as effectual for the conveyance of Freehold Estates as a Lease and Release by the same parties,” hath granted, bargained, sold, aliened, released and enfranchised, and by these presents doth grant, bargain, sell, alien, release and enfranchise unto the said C. D. his heirs and assigns (b), All &c., together with all outhouses, ways &c., to the said messuages, lands, hereditaments and premises belonging, or in

(b) It is usual and more correct to effect an enfranchisement by the ordinary mode of conveying freehold property, but some are of opinion that a release by the

lord to the copyholder of all seigniorial rights will alone be sufficient; ante, pt. 1, p. 550, et seq.

anywise appertaining, or therewith used, occupied, or enjoyed, or accepted, reputed, deemed, taken, or known as part, parcel or member thereof or any part thereof, and the reversion and reversions, remainder and remainders, yearly and other rents, issues and profits thereof, and all the estate, right, title, interest, freehold, inheritance, use, trust, benefit, property, power, claim and demand whatsoever of the said *A. Z.*, in, to or out of the same premises and every part thereof, [save and except and reserving unto the said *A. Z.*, his heirs and assigns, out of this present grant, release and assurance, the aforesaid yearly rent of £——, the same to be for ever hereafter paid to the said *A. Z.*, his heirs and assigns, as a free rent, and to be issuing and payable out of the said hereditaments and premises and every part thereof, at such times and in such manner as the same is now due and accustomed to be paid; and save and except and reserving in like manner as aforesaid all coal mines, veins and seams of coal, and all other mines, metals and minerals whatsoever, and all quarries of stone, with full liberty and power for the said *A. Z.*, his heirs and assigns, and his and their workmen, servants and agents, at his and their free will and pleasure, to search for, dig, work and carry away the same, and for the better working the same mines and quarries to erect furnaces, engines, smelting houses and other requisite buildings, and to make, lay down and continue any railway, and to make drains, sluices and cuts, and do every other act necessary or expedient for raising and carrying away all such coals, metals, minerals and stone, doing as little injury as may be to the soil of the said copyhold premises, and making a reasonable compensation for the damage which may be sustained by the owners or occupiers of the same premises by reason of the exercise of the privilege hereby excepted and reserved; and save and except also and reserving in like manner as aforesaid such free liberty of hunting, fishing and fowling, and all such deodands, waifs, estrays, and other royalties, privileges, liberties, franchises and seignioral rights and immunities not hereby expressly granted, released and extinguished, as have been at any time heretofore exercised or enjoyed by the said *A. Z.*, or any of his ancestors or predecessors, lords of the aforesaid manor, and as fully to all intents and purposes as the said *A. Z.* his heirs or assigns could or might have used, exercised or enjoyed the same if these presents had not been made or executed:] *to have and to hold* the said messuages, lands and all and singular other the hereditaments and premises mentioned or intended to be hereby granted, released and enfranchised, with their and every of their appurtenances, [except as hereinbefore is excepted,] unto the said *C. D.*, his heirs and assigns, to the use and behoof of the said *C. D.*, his heirs and assigns for ever, freed and absolutely acquitted, exonerated and discharged, henceforth and for ever hereafter, of and from all and all manner of customary fines, heriots, rents, [except as is hereinbefore mentioned,] fealty, suit of court, amercements, forfeitures and other customary payments, duties, services and penalties whatsoever, which by or according to the custom of the manor of —— aforesaid the said messuages, lands, hereditaments and premises hereinbefore described, or any of them, are or is, or have or hath been subject or liable to or charged

with, or which would otherwise be payable or to be done and performed to the lord or lady, lords or ladies for the time being of the said manor of —, for or in respect of the same hereditaments and premises as copyhold holden of the aforesaid manor. [Yielding, paying and rendering, nevertheless, unto the said *A. Z.*, his heirs and assigns for ever, the said yearly quit or chief rent of £——, (heretofore payable in respect of the said hereditaments and premises as copyhold held of the aforesaid manor,) at or upon the feast day of St. Michael the Archangel in every year, clear of all taxes and deductions whatsoever, the first payment to begin and be made on the feast day of St. Michael the Archangel now next ensuing: and yielding, rendering and performing such and the like suit of court at the court baron of the said *A. Z.*, his heirs and assigns, to be holden from time to time for the said manor of —, and other services, as other the freehold tenants are subject and liable to do and perform in respect of their estates lying within and holden of the same manor. And the said *C. D.* for himself, his heirs, executors, administrators and assigns, doth hereby grant, covenant, promise and agree with and to the said *A. Z.*, his heirs and assigns, that in case the said yearly rent hereby reserved shall at any time or times hereafter be in arrear and unpaid, either in part or in the whole, or in case the said *C. D.*, his heirs or assigns, shall neglect or refuse to do and perform such suit and services as are hereinbefore also reserved or intended so to be, then and in any or either of the said cases it shall be lawful for the said *A. Z.*, his heirs and assigns, from time to time to exercise and pursue such remedies by amercement, distress, action or suit, at law or in equity, or otherwise howsoever, for compelling payment and performance of the same rent, suit and services respectively, as the said *A. Z.*, his heirs or assigns, is or may be authorized or intitled to exercise and pursue, by reason of any neglect or refusal by or on the part of other the freehold tenants of the said manor to pay the rents or perform the suits or services which they respectively are subject and liable to pay and perform in respect of their estates lying within and holden of the aforesaid manor](c). Provided always, and it is hereby declared to be the true intent and meaning of the said parties hereto, that nothing in these presents contained is meant to extend to the enfranchisement of, or shall be deemed, construed or adjudged to enfranchise any part or parts of the copyhold hereditaments lying within and holden by the said *C. D.* of the said manor of —, (other than and except the messuages, lands, hereditaments and premises hereinbefore described,) or to acquit, release or discharge the same premises, (other than except as aforesaid,) from any fines, heriots, rents, fealty, suit of court, amercements, forfeitures, payments, duties, services or penalties which, by or according to the custom of the aforesaid manor, the same premises have at any time heretofore been subject or liable to or charged with, or which

(c) By omitting the clauses between the brackets here and in 895, 896, (by which mines, &c., are excepted out of the grant, and rent and suit of court are

reserved to the lord,) this precedent will serve for a more ordinary deed of enfranchisement.

have been or ought to have been paid, done or performed for or in respect of the same premises, as copyhold holden of the manor of — aforesaid. And this indenture also witnesseth, that for the considerations aforesaid, and in order to preserve to the said *C. D.*, his heirs and assigns, all such rights of common in, upon and over the waste lands of the manor of — aforesaid as he the said *C. D.* or any of his ancestors or predecessors hath or have heretofore used and enjoyed as belonging or appurtenant to the messuages, lands and hereditaments hereinbefore described, notwithstanding the enfranchisement of the same respective hereditaments (*d*), he the said *A. Z.* hath granted and confirmed, and by these presents doth grant and confirm unto the said *C. D.*, his heirs and assigns for ever, all such commonage and right or title to common, of what nature or kind soever, in, upon and over all or any of the wastes, commons and commonable lands of or belonging to the manor of — aforesaid as he the said *C. D.* immediately previous to the execution of these presents, or as any of his ancestors or predecessors held, possessed or enjoyed in respect of and as appurtenant or belonging to all or any part of the messuages, lands, hereditaments and premises mentioned or intended to be hereby enfranchised, and the freehold and inheritance of all such commonable rights as aforesaid, in as large, ample and beneficial a manner to all intents and purposes as he the said *C. D.* or any of his ancestors or predecessors hath or have heretofore used and exercised all or any of the said rights or privileges, or as he or his customary heirs could or might have used and exercised the same if the aforesaid messuages, lands, hereditaments and premises had not been enfranchised. And the said *A. Z.* for himself, his heirs, executors and administrators doth covenant, promise, grant and agree with and to the said *C. D.*, his heirs and assigns, by these presents, in manner following, (that is to say,) that (for and notwithstanding any act, deed, matter or thing whatsoever by the said *A. Z.* or any of his ancestors at any time heretofore made, done, committed, executed or wittingly suffered to the contrary), he the said *A. Z.* now at the time of the sealing and delivery of these presents is and standeth lawfully and rightfully seized of the aforesaid manor of — for an estate of inheritance in fee-simple in possession, and hath in himself good right, full power and absolute authority to grant, release and enfranchise all and singular the said messuages, lands, hereditaments and premises hereinbefore granted, released and enfranchised, or intended so to be, with their appurtenances, in manner aforesaid, and according to the true intent and meaning of these presents: And moreover, that it shall and may be lawful to and for the said *C. D.*, his heirs and assigns, from time to time and at all times for ever hereafter, peaceably and quietly to have, hold and enjoy the freehold and inheritance of all and singular the said messuages, lands, hereditaments and premises mentioned or intended to be hereby granted, released and enfranchised, with their appurtenances, for his and their own proper use and benefit, without any lawful let, suit, trouble, molestation, eviction, ejection, interruption or dis-

(*d*) Ante, pt. 1, p. 556; and see 4 & 5 Vict. c. 35, s. 81.

turbance whatsoever of, from or by the said *A. Z.*, or his heirs, or any person or persons lawfully or equitably and rightfully claiming or to claim by, from, under or in trust for him or any of his ancestors; and that, free and clear, and freed and absolutely acquitted, exonerated and discharged, or otherwise by the said *A. Z.*, his heirs, executors and administrators, well and effectually saved, defended, kept harmless and indemnified of, from and against all former and other gifts, grants, bargains, sales, leases, mortgages, rents, jointures, dowers, settlements, uses, trusts, wills, intails, statutes, recognizances, judgments, extents, executions, and all other estates, titles, troubles, charges and incumbrances whatsoever, had, made, done, committed, executed, or wittingly suffered or consented unto by the said *A. Z.*, or any of his ancestors, or any person or persons claiming by, from, through, under or in trust for him, them or any of them, or by or through his, their or any of their acts, means, default, privity, consent or procurement: And further, that the said *A. Z.* and his heirs, and all and every persons and person whosoever having or lawfully or equitably claiming or to claim any estate, right, title, trust or interest in, to or out of the aforesaid manor of —, by, from, through, under or in trust for him or any of his ancestors, shall and will from time to time and at all times hereafter, upon the reasonable request, and at the proper costs and charges in the law of the said *C. D.*, his heirs or assigns, make, do and execute, or cause and procure to be made, done and executed all and every such further and other acts, deeds, conveyances and assurances in the law whatsoever, for the further, better and more perfectly and absolutely enfranchising all and singular the said messuages, lands, hereditaments and premises hereinbefore granted, released and enfranchised, or intended so to be, with their appurtenances, as by the said *C. D.*, his heirs or assigns, or his or their counsel learned in the law, shall be lawfully and reasonably devised or advised and required, so as such further assurances contain in them no farther or other covenant or warranty than against the person or persons making and executing the same, and his or their own heirs and ancestors' acts and deeds respectively, and so as the party or parties required to make and execute such further assurance or assurances be not compelled nor compellable for the purpose thereof to go or travel from his or their usual place or places of abode: And lastly, that he the said *A. Z.*, his heirs or assigns, shall and will from time to time and at all times hereafter, upon reasonable notice and at the request, costs and charges of the said *C. D.*, his heirs or assigns, (unless prevented by fire or other inevitable accident,) produce and show forth, or cause and procure to be produced and shown forth unto him or them, or to his or their counsel, attornies, solicitors or agents, or in any court or courts of law or equity, or upon any motion, petition, examination, commission, trial or hearing, or otherwise as occasion shall require, all or any of the deeds, evidences and writings specified in the schedule hereunder written, for the manifesting, evidencing, maintaining, defending and proving the title, estate, right, interest, property and possession of the said *C. D.*, his heirs and assigns, in and to the freehold and inheritance of the said messuages, lands, hereditaments and premises

mentioned or intended to be hereby granted, released and enfranchised, or any of them. In witness, &c.

(The schedule above referred to.)

(Deed of enfranchisement under a power in a marriage settlement.)

This indenture of three parts made the — day of &c., between *A. B.* of &c., and *C. D.* of &c., [*the trustees for sale and enfranchisement,*] of the first part, *E. F.* of &c., [*the tenant for life in possession,*] and *G.* his wife of the second part, and *H. H.* of &c., [*the copyholder,*] of the third part: Whereas by virtue of indentures of lease and release bearing date &c., and made between the said *E. F.* of the first part, the said *G. F.* now the wife of the said *E. F.*, (by her then name and description of *G. G.* of &c., spinster,) of the second part, the said *A. B.* and *C. D.* of the third part, and *I. K.* and *L. M.* [*trustees of a term of years for securing portions &c.,*] of the fourth part, (being the settlement made previous to and in contemplation of the marriage then intended and which was soon afterwards duly had and solemnized between the said *E. F.* and *G. F.* his wife,) the manor of — in the county of —, with its rights, members and appurtenances, was (together with other manors and hereditaments) limited, settled and assured (from and after the solemnization of the said marriage between the said *E. F.* and *G. F.* his wife) to the use of the said *E. F.* and his assigns for the term of his natural life without impeachment of waste, with remainder to the use of the said *A. B.* and *C. D.* and their heirs during the life of the said *E. F.* in trust to preserve contingent remainders, with remainder to the use and intent to secure to the said *G. F.* and her assigns for her life the jointure annuity therein mentioned and in such manner as therein is expressed, and subject thereto to and for the several uses, intents and purposes, upon the several trusts and with, under and subject to the several powers, provisos, limitations, declarations and agreements in the said indenture of release limited, declared, expressed and contained of and concerning the same estates respectively, and with the ultimate limitation or reversion to the use of the right heirs of the said *E. F.* for ever; and in which same indenture of release was contained (among other powers or provisos) the usual powers of leasing and of sale and exchange, and also a power or proviso whereby it was agreed and declared by and between all the parties thereto that it should and might be lawful to and for the said *A. B.* and *C. D.*, and the survivor of them or his heirs, at any time or times thereafter during the life of the said *E. F.*, with the consent and approbation of the said *E. F.* and *G.* his wife, or of the said *E. F.* alone if he survived his said wife, (to be testified by some writing under their or his hands and seals or hand and seal, and to be attested by two or more credible witnesses,) to enfranchise, and for that purpose to grant, bargain, sell, release and confirm all or any of the messuages &c., holden by copy of court roll of all or any of the manors mentioned or intended to be thereby granted and released, for such price or prices in money as should be thought reasonable, and upon payment of the money to arise

by any such enfranchisement or enfranchisements, to sign and give a proper receipt or proper receipts for the consideration money of such enfranchisement or enfranchisements, which receipt or receipts respectively should be a sufficient discharge to any person or persons to whom such enfranchisement or enfranchisements respectively should be made for so much money as should be therein expressed or acknowledged to be received, and that the person or persons paying the consideration money for any such enfranchisement, his, her or their heirs, executors, administrators or assigns, should not afterwards be bound to see to the application of the same monies nor be responsible for the loss, misapplication or non-application thereof or any part thereof: And it was by the reciting indenture of release and settlement further agreed and declared, that when any of the said premises should be enfranchised, and such proper receipt be given for the consideration money of such enfranchisement, the freehold of all and every the messuages, farms, lands, tenements and hereditaments so enfranchised should be and remain for ever from thenceforth freed and absolutely discharged of and from all and every the uses, trusts, limitations, powers, provisos, declarations and agreements in and by the said indenture of release and settlement limited, declared or expressed, and then and from thenceforth the same indenture and the grant and release thereinbefore contained should be and enure, as to and concerning the hereditaments and premises so to be enfranchised, to the only use and behoof of the person or persons to whom such enfranchisement or enfranchisements should be respectively made, and of his, her and their heirs and assigns for ever: And it was thereby further agreed and declared, that upon every such enfranchisement as aforesaid it should be lawful for the said *A. B.* and *C. D.*, and the survivor of them and his heirs, with such consent and approbation and so testified as aforesaid, to grant, limit and appoint unto and to the use of the person or persons to whom any such enfranchisement should be made, and to his, her or their heirs and assigns, all such right of common in and over the wastes of the manor or respective manors whereof such copyhold hereditaments should be respectively holden as belonged to or was held and enjoyed by the person or persons so enfranchising immediately previous to the execution of the deed or deeds whereby such enfranchisement should be made, or as any of his, her or their ancestors or predecessors held, possessed or enjoyed in respect of or as appurtenant and belonging to the hereditaments to be enfranchised as aforesaid, and the freehold and inheritance of all such commonable rights, to the intent to preserve or restore and confirm the same rights, notwithstanding the union of the freehold with the copyhold interest of and in the same hereditaments respectively (*e*): And whereas at a court holden for the manor of — aforesaid on the — day of —, all and singular the lands and hereditaments hereinafter described with their appurtenances were surrendered into the hands of the lord of the same manor, according to the custom thereof, to the use of the said *H. H.*, his heirs and assigns for ever, and at the same court seizin was granted by the lord to the said

(*e*) Ante, pt. 1, p. 556.

H. H. of the same customary or copyhold hereditaments, to hold to him the said *H. H.* and his heirs by copy of court roll at the will of the lord according to the custom of the said manor of — ; And whereas the said *A. B.* and *C. D.*, with the consent and approbation of the said *E. F.* and *G.* his wife, (testified by this deed or instrument in writing, sealed and delivered by them in the presence of and attested by the two credible persons whose names are hereon indorsed as witnesses to the sealing and delivery hereof by them the said *E. F.* and *G.* his wife,) did lately contract and agree with the said *H. H.* for the enfranchisement of the said customary or copyhold lands and hereditaments hereinafter described at or for the price or sum of £—— : Now this indenture witnesseth that in pursuance and performance of the said recited contract, and for and in consideration of the sum of £—— of lawful money &c., to the said *A. B.* and *C. D.* in hand well and truly paid by the said *H. H.* at or before the sealing and delivery of these presents, the receipt whereof the said *A. B.* and *C. D.* do hereby acknowledge, and of and from the same and every part thereof do acquit, release and discharge the said *H. H.*, his heirs, executors, administrators and assigns and every of them for ever by these presents, They the said *A. B.* and *C. D.*, by virtue and in exercise of the said power or authority in this behalf mentioned and contained in the said recited indenture of release and settlement, and by and with the consent and approbation of the said *E. F.* and *G.* his wife, (testified as aforesaid,) and by force of all and every other powers and authorities, power and authority to the said *A. B.* and *C. D.* belonging or in anywise enabling them hereunto, have enfranchised, limited and appointed, and by these presents do enfranchise, limit and appoint, And the said *E. F.* for the consideration aforesaid, and also in consideration of the sum of 10s. of lawful money aforesaid to him in hand paid by the said *H. H.* at or before the execution hereof, the receipt whereof is hereby acknowledged, and according to the estate and interest of him the said *E. F.*, hath granted, bargained, sold, released, enfranchised and confirmed, and by these presents doth grant, bargain, sell, release, enfranchise and confirm unto the said *H. H.* his heirs and assigns, All &c., together with all ways &c., and the freehold and inheritance of the same premises, and the reversion &c., and all the estate &c., of the said *E. F.* in, to or out of the same premises and every part thereof: *to have and to hold* the said lands, hereditaments and all other the premises mentioned or intended to be hereby enfranchised, limited and appointed, granted, released or otherwise assured, with their appurtenances, unto and to the use of the said *H. H.* his heirs and assigns for ever, freed and absolutely acquitted, exonerated and discharged henceforth and for ever hereafter of and from all and all manner of customary fines, heriots, rents, fealty, suit of court, amercements, forfeitures, and all other customary payments, duties, services and penalties whatsoever, which by or according to the custom of the manor of — aforesaid, the said lands, hereditaments and premises hereinbefore described or any of them are or is or have or hath been subject or liable to or charged with, or which would otherwise be payable or to be done and performed to the

lord or lady, lords or ladies for the time being of the said manor of ——— for or in respect of the same hereditaments and premises as copyhold holden of the aforesaid manor (*f*): And this indenture further witnesseth that for the consideration aforesaid, and in order to preserve to the said *H. H.*, his heirs and assigns, all such right of common in and over the wastes of the manor of ——— aforesaid as he the said *H. H.*, or any of his ancestors or predecessors hath or have heretofore used and enjoyed as belonging or appurtenant to the lands and hereditaments hereinbefore described, notwithstanding the enfranchisement of the same respective hereditaments, they the said *A. B.* and *C. D.*, by force and virtue and in exercise of the power or authority in this behalf mentioned and contained in the said recited indenture of release and settlement, and of all and every other powers and authorities, power and authority enabling them hereunto, and with the like consent and approbation of the said *E. F.* and *G.* his wife, (testified as aforesaid,) and also the said *E. F.* according to his estate and interest have and every of them hath granted, limited, appointed and confirmed, and by these presents do and every of them doth grant, limit, appoint and confirm unto the said *H. H.*, his heirs and assigns for ever, all such commonage and right or title to common of what nature or kind soever in, upon and over all or any of the wastes, commons and commonable lands of or belonging to the manor of ——— aforesaid as he the said *H. H.* immediately previous to the execution of these presents or as any of his ancestors or predecessors held, possessed or enjoyed in respect of or as appurtenant and belonging to the lands, hereditaments and premises mentioned or intended to be hereby enfranchised, and the freehold and inheritance of all such commonable rights as aforesaid, in as large, ample and beneficial a manner, to all intents and purposes, as he the said *H. H.*, or any of his ancestors or predecessors hath or have heretofore used and exercised all or any of the said rights or privileges, or as he or his customary heirs could or might have used and exercised the same, if the aforesaid lands, hereditaments and premises had not been enfranchised; And the said *A. B.* and *C. D.* for themselves respectively, their respective heirs, executors and administrators, but not jointly or the one for the other of them, or the heirs, executors, administrators, acts or deeds of the other of them, do hereby covenant and declare with and to the said *H. H.*, his heirs and assigns, that they the said *A. B.* and *C. D.* have not nor hath either of them at any time heretofore made, done, committed, executed nor wittingly suffered nor consented unto any act, deed, matter or thing whatsoever, whereby or by means whereof they the said *A. B.* and *C. D.* can or may be prevented from exercising the said recited power of enfranchisement mentioned and contained in the said indenture of release and settlement of the ——— day of ———, in the manner aforesaid and according to the true intent and meaning of these presents: And the said *E. F.*, for himself, his heirs, executors and administrators, doth covenant, promise and agree with and to the said *H. H.*,

(*f*) If *H. H.* should continue a copyholder of the manor in respect of other lands, it will be proper to add a proviso or agreement similar to that in p. 897, ante.

his heirs and assigns by these presents in manner following, (that is to say,) that it shall and may be lawful to and for the said *H. H.*, his heirs and assigns, from time to time and at all times for ever hereafter peaceably and quietly to have, hold and enjoy the freehold and inheritance of all and singular the said lands, hereditaments and premises mentioned or intended to be hereby enfranchised, limited and appointed, granted, released or otherwise assured, with their appurtenances, for his and their own proper use and benefit, without any lawful let, suit, trouble, molestation, eviction, ejection, interruption or disturbance whatsoever, of, from or by the said *E. F.* or his heirs, or any person or persons lawfully or equitably and rightfully claiming or to claim by, from, under or in trust for him or them; and that, free and clear and freed and absolutely acquitted, exonerated and discharged, or otherwise by the said *E. F.*, his heirs, executors and administrators, well and effectually saved, defended, kept harmless and indemnified of, from and against all former and other gifts, grants, bargains, sales, leases, mortgages, rents, jointures, dowers, settlements, uses, trusts, wills, intails, statutes, recognizances, judgments, extents, executions, and all other estates, titles, troubles, charges and incumbrances whatsoever, had, made, done, committed, executed, or wittingly suffered or consented unto by the said *E. F.*, or any person or persons claiming by, from, through, under or in trust for him, or by or through his or their acts, means, default, privity, consent or procurement: And further that the said *E. F.* and his heirs, and all and every persons and person having or lawfully or equitably claiming or to claim any estate, right, title, trust or interest in, to or out of the aforesaid manor of —, by, from, through, under or in trust for him or them, shall and will from time to time and at all times hereafter, upon the reasonable request and at the proper costs and charges in the law of the said *H. H.*, his heirs or assigns, make, do and execute, or cause and procure to be made, done and executed, all and every such further and other acts, deeds, conveyances and assurances in the law whatsoever, for the further, better and more perfectly and absolutely enfranchising all and singular the said lands, hereditaments and premises hereinbefore enfranchised, limited and appointed, granted, released or otherwise assured or intended so to be, with their appurtenances, as by the said *H. H.*, his heirs or assigns, or his or their counsel learned in the law, shall be lawfully and reasonably devised or advised and required: And lastly, that he the said *E. F.*, his heirs or assigns, shall and will from time to time and at all times hereafter, upon reasonable notice, and at the request, costs and charges of the said *H. H.*, his heirs or assigns, (unless prevented by fire or other inevitable accident,) produce and show forth or cause and procure to be produced and shown forth unto him or them, or to his or their counsel, attornies, solicitors or agents, or in any court or courts of law or equity, or upon any motion, petition, examination, commission, trial, or hearing, or otherwise, as occasion shall require, all or any of the deeds, evidences and writings specified in the schedule hereunder written, for the manifesting, evidencing, maintaining, defending and proving the title, estate, right, interest, property and possession of the said *H. H.*, his

heirs and assigns, in and to the freehold and inheritance of the said lands, hereditaments and premises hereinbefore described and mentioned, or intended to be hereby enfranchised, limited and appointed, granted, released or otherwise assured or any of them: Provided always and it is hereby agreed and declared by and between the said *H. H.* and the said *E. F.*, that in case the said *E. F.*, his heirs, executors or administrators, shall at his or their costs and charges at any time hereafter procure the person or persons for the time being intitled to the custody of the aforesaid deeds, evidences and writings, to enter into a deed of covenant with the said *H. H.*, his heirs and assigns, of the like tenor and import as the covenant last hereinbefore contained, and shall deliver over the same deed of covenant unto him the said *H. H.*, his heirs or assigns, then and in such case the said last hereinbefore mentioned covenant shall cease, determine and be void to all intents and purposes whatsoever. In witness &c.

(The Schedule above referred to.)

(Deed of disposition of a contingent interest in copyholds under 8 & 9 Vict. c. 106, s. 6, to a purchaser) (g).

This indenture made &c., between *A. B.* [*vendor*] of &c., of the one part, and *C. D.* [*purchaser*] of &c., of the other part: Whereas [*recite such facts as will show the vendor's title to the interest disposed of*]: And whereas the said *C. D.* hath contracted and agreed with the said *A. B.* for the absolute purchase of the contingent interest of him the said *A. B.* in and to the said customary or copyhold hereditaments and premises hereinbefore described, and the inheritance thereof, according to the custom of the said manor of —, free from incumbrances, except the accustomed rents, fines, heriots, duties and services payable and to be performed in respect thereof, for the sum of £—: Now this indenture witnesseth that in pursuance of the said contract and agreement, and in consideration of the sum of £— to the said *A. B.* in hand paid by the said *C. D.* at or before the sealing and delivery hereof, the receipt of which said sum of £— the said *A. B.* doth hereby acknowledge, and from the same doth release and for ever discharge the said *C. D.*, his heirs, executors, administrators and assigns, he the said *A. B.*, in pursuance of the power contained in an act of parliament passed in the eighth and ninth years of the reign of her present majesty, intituled “An Act to amend the Law of Real Property,” doth by this deed grant and dispose of unto the said *C. D.*, his heirs and assigns, All that the contingent interest of him the said *A. B.* in and to All [*parcels*], and in and to all the rights, members and appurtenances to the said customary or copyhold hereditaments

(g) See extracts from the act in the appendix, and ante, pt. 1, p. 137 et seq. Such variations in the following precedent as circumstances may require will readily suggest themselves. If the parties dis-

posing are husband and wife claiming in her right, the deed must be acknowledged by her in the mode prescribed by the act for the abolition of fines and recoveries.

and premises belonging or in anywise appertaining ; and all the estate, right, title, interest, power, claim and demand whatsoever of him the said *A. B.*, in, to or out of the same hereditaments and premises and every part thereof: *to have and to hold* the said interest and other the premises hereby granted and disposed of or intended so to be, with the appurtenances, unto the said *C. D.* and his heirs, *to the use* of the said *C. D.*, his heirs and assigns for ever. [*Covenants by A. B. that he has right to grant and dispose of the interest in question, free from incumbrances and for further assurance.*] In witness &c.

EXTRACTS
FROM
VARIOUS ACTS OF PARLIAMENT RELATING TO
COPYHOLDS.

1 RIC. III. c. 4 (a).

*“ Of what credit and estate those jurors must be which shall be impanelled
in the sheriff's turn.”*

This statute, after noticing that great inconvenience and perjuries daily happened “by untrue verdicts given in inquisitions and inquiries before sheriffs in their turns,” enacted that no bailiff nor other officer should from thenceforth return or impanel any such person in any shire of England to be taken or put in or upon any such inquiry in any of the said turns, but such as were of good name and fame, and had lands and tenements of freehold within the same shires to the yearly value of 20s. at the least, or else lands and tenements holden by custom of manor, commonly called copyhold, within the said shires, to the yearly value of 20s. 8d. over all charges at the least.

1 EDW. VI. c. 14.

“ The act for chantries collegiate.”

This statute gives to the king all colleges, chantries, &c., *in esse* within five years before the first day of the then present parliament, and not then in the king's possession nor within the exception of the same statute or of the act of 37 Hen. 8, c. 4: and all manors, &c., belonging thereto, and all manors, &c., appointed to the finding of any priest to have continuance for ever.

Sect. 39. “Provided always that this act nor anything therein contained shall in anywise extend to any lands, tenements, possessions or hereditaments whatsoever, that any master, dean, prebendary, warden or chantry, or any stipendiary priest of any college, chantry, prebend, fraternity, guild or any other corporations, have or held of any person or persons *by copy of court roll or at will, according to the custom of any manor or manors*, nor give or grant any *copyhold lands* to the king's highness.”

Sect. 40. “And also provided that the king's highness, his heirs or succes-

(a) See Co. Cop. s. 52, Tr. 120.

sors shall not in anywise have, hold, enjoy or take by virtue of this act or any article therein contained any manner of *copyhold lands, tenements, possessions or hereditaments*, whatsoever they be; but that all and every the said persons and incumbents shall have, hold and enjoy the same during their lives towards their pension and yearly living, paying their rents and doing their customs and services thereof due and accustomed; anything in this act to the contrary notwithstanding."

2 & 3 EDW. VI. c. 8.

"*An act for finding of offices before escheators.*"

"Where many and divers persons holding or that have holden lands, tenements or hereditaments, some for term of years and some *by copy of court roll*, have been expelled and put out of their terms and holds by reason of inquisitions or offices founden before escheators, commissioners and others, *containing tenures of the king in capite (b)*, intituling the king to the wardship or custody of such lands or tenements, and sometime intituling the king to the same upon attainders of treason, felony or otherwise, by reason that such leases for term of years *or interest by copy of court roll* of such persons have not been found in such inquisitions or offices: after which expulsion or putting out the said persons have been without remedy for the obtaining of the said *fermes* and holds during the king's possession therein; and can have no traverse, *monstrans de droit*, nor other remedy for the same, because their said interest is but a chattel in the law, *or a customary hold*, and no estate of freehold:

Sect. 2. "And also where any person or persons hath any rent, common office, fee or other profit *apprendre* of an estate of freehold, or for years or otherwise out of such lands or tenements specified in such offices or inquisitions, the said rent, common office, fee or profit *apprendre* not found in the same office or offices, such persons are in like manner without remedy to obtain or have the said rent, common, office, fee or profit *apprendre* by any traverse or other speedy mean, without great and excessive charges, during the king's interest therein by force of such inquisition or office."

Sect. 3. "For remedy whereof be it enacted by authority of this present parliament, that where any such office or inquisition is or shall be founden, omitting such titles, interests or matters as aforesaid, that in all such cases every lessee, tenant for term of years, *or copyholder*, and every such person or persons that have or shall have any interest to any rent, common or profit *apprendre* for term of years, life or otherwise out of any of the lands, tenements or hereditaments contained in such office or inquisition where the king, his heirs or successors is or shall be intituled as is aforesaid to any such lands, tenements or hereditaments, shall have, hold, enjoy and perceive all and every their leases and interests for term of years, *or by*

(b) See 12 Car. II. c. 24, reducing all tenures to free and common socage, except only tenure by copy of court roll and

otherwise as mentioned, ante, pt. 2, p. 567, pt. 3, p. 610 et seq.

copy of court roll, rents, commons, offices, fees and profits *apprendre* in such manner, form, state and condition as they and every of them should or might have done in case there had been no such office or inquisition founden, and as they should or lawfully might or ought to have done in case such lease, *interest by copy of court roll*, rent, common, office, fee or profit *apprendre* had been found in such office or inquisition; any law, custom or usage to the contrary heretofore used in such cases in anywise notwithstanding."

5 ELIZ. c. 14.

"An act against forgers of false deeds and writings."

Sect. 2. Be it enacted, &c., "That if any person or persons whatsoever, after the first day of June now next coming, upon his or their own head and imagination, or by false conspiracy and fraud with others, shall wittingly, subtilly and falsely forge, or make or subtilly cause or wittingly assent to be forged or made, any false deed, charter or writing sealed, *court roll*, or the will of any person or persons in writing, to the intent that the estate of freehold or inheritance of any person or persons of, in or to any lands, tenements or hereditaments, freehold or copyhold, or the right, title or interest of any person or persons of, in or to the same or any of them, shall or may be molested, troubled, defeated, recovered or charged; or after the said first day of June shall pronounce, publish or show forth in evidence any such false and forged deed, charter, writing, *court roll* or will as true, knowing the same to be false and forged as is aforesaid, to the intent above remembered, and shall be thereof convicted either upon action or actions of forger of false deeds, to be founded upon this statute at the suit of the party grieved or otherwise, according to the order and due course of the laws of this realm, or upon bill or information to be exhibited into the court of the star chamber according to the order and use of that court, shall pay unto the party grieved his double costs and damages, to be found or assessed in that court where such conviction shall be, and also shall be set upon the pillory in some open market town or other open place, and there to have both his ears cut off and also his nostrils to be slit and cut and seared with a hot iron, so as they may remain for a perpetual note or mark of his falsehood, and shall forfeit to the queen our sovereign lady, her heirs and successors the whole issues and profits of his lands and tenements during his life, and also shall suffer and have perpetual imprisonment during his life; the said damages and costs to be recovered at the suit of the party grieved as is aforesaid, to be first paid and levied of the goods and chattels of the offender, and of the issues and profits of the said lands, tenements and hereditaments of such party convicted, or of one or both of them; the said title of our said sovereign lady the queen, her heirs or successors to the same notwithstanding."

Sect. 3. "And be it further enacted by the authority aforesaid, that if any person or persons, after the said first day of June, upon his or their own

head or imagination, or by false conspiracy or fraud had with any other, shall wittingly, subtilly and falsely forge, or make or wittingly, subtilly and falsely cause or assent to be made and forged, any false charter, deed or writing, to the intent that any person or persons shall or may have or claim any estate or interest for term of years of, in or to any manors, lands, tenements or hereditaments, *not being copyhold*, or any annuity in fee simple, fee tail, or for term of life, lives or years; or after the said day shall, as is aforesaid, forge, make or cause or assent to be made or forged, any obligation or bill obligatory, or any acquittance, release or other discharge of any debt, accompt, action, suit, demand or other things personal; or if any person or persons, after the said first day of June, shall pronounce, publish or give in evidence any such false and forged charter, deed, writing, obligation, bill obligatory, acquittance, release or discharge as true, knowing the same to be false and forged, and shall be thereof convicted by any the ways or means aforesaid, that then he shall pay unto the party grieved his double costs and damages, to be found and assessed in such court where the said conviction shall be had, and shall be also set upon the pillory in some open market town or other open place, and there to have one of his ears cut off, and shall also have and suffer imprisonment by the space of one whole year without bail or mainprise."

Sect. 4. "And be it further enacted by the authority aforesaid, that the party and parties grieved by reason of any of the offences aforesaid shall and may, at his and their pleasure, have and sue his action of forger of false deeds upon this statute against any the offenders in the same by original writ out of the queen's highness Court of Chancery, and shall and may have like process upon the same as in cases of trespass at the common law; or may at his pleasure take his suit against any such offenders in any the premises by bill before the queen's highness, her heirs and successors, in her court commonly called the King's Bench or in the Court of Exchequer; in which suits no essoign, injunction or protection shall be allowed for the party defendant."

Sect. 5. "And be it further enacted by the authority aforesaid, that if the party defendant shall be convicted for any the offences aforesaid, according to the order and form above limited, and shall have received thereupon punishment corporal, according to this act, that then he shall not eftsoons be impeached for the same offence."

Sect. 6. "And be it further enacted by the authority aforesaid, that although the party or parties plaintiff in any such action or bill to be sued as is aforesaid, shall, after verdict passed against the defendant or defendants, happen to release or discharge the judgment or execution upon the same, or otherwise suffer the same to be discontinued, that yet, nevertheless, the same release, discharge or discontinuance shall extend only to discharge such costs and damages as the same plaintiff should have had against the defendant; and that the judges before whom the said action or suit shall be taken shall and may proceed to judgment of and upon the residue of the said penalties and forfeitures, and to command execution upon the same;

the said release, discontinuance or other discharge had, made, done or suffered by the party plaintiff in anywise notwithstanding; this act or any thing therein contained to the contrary in anywise notwithstanding."

Sect. 7. "And be it further enacted by the authority aforesaid, that if any person or persons, being hereafter convicted or condemned of any the offences aforesaid by any the ways or means above limited, shall, after any such his or their conviction or condemnation, eftsoons commit or perpetrate any of the said offences in form aforesaid, then every such second offence or offences shall be adjudged felony, and the parties being thereof convicted or attainted according to the laws of this realm shall suffer such pains of death, loss and forfeiture of their goods, chattels, lands and tenements, as in cases of felony by the common laws of this realm ought to be lost or forfeited, without having any advantage or benefit of clergy or sanctuary; saving to every person and persons, bodies politic and corporate, their heirs and successors, other than the said offenders and such as claim to their uses, all such rights, titles, interests, possessions, liberties of distresses, leases, rents, reversions, offices and other profits and advantages which they or any of them shall have, at the time of such conviction or attainder, of, in or to any lands, tenements or hereditaments of any such person so as is aforesaid convicted or attainted, or at any time before, in as large and as ample manner, to all intents and purposes, as if this act had never been had nor made."

Sect. 8. "Provided always and be it enacted by the authority aforesaid, that any such conviction or attainder of felony as is aforesaid, or any forfeiture by reason of the same, shall not in anywise extend to take away the dower of the wife of any such person attainted, nor to the corruption of blood or disherison of any the heir or heirs of any such person or persons so attainted; this act or anything therein contained, or any other statute, law, usage, custom or thing heretofore used to the contrary in anywise notwithstanding."

27 ELIZ. c. 4.

"An act against covinous and fraudulent conveyances" (c).

"For as much as not only the queen's most excellent majesty, but also divers of her highness's good and loving subjects and bodies politic and corporate, after conveyances obtained or to be obtained, and purchases made or to be made, of lands, tenements, leases, estates and hereditaments for money or other good considerations, may have, incur and receive great loss and prejudice by reason of fraudulent and covinous conveyances, estates, gifts, grants, charges and limitations of uses heretofore made or hereafter to be made of, in or out of lands, tenements or hereditaments so purchased or to be purchased, which said gifts, grants, charges, estates, uses and conveyances were or hereafter shall be meant and intended by the parties that

(c) Ante, pt. 1, pp. 83, 202. And see Ald. 131; 2 Nev. & Mann. 64. Doe & Tunstall v. Bottrill, 5 Barn. &

so make the same to be fraudulent and covinous, of purpose and intent to deceive such as have purchased or shall purchase the same, or else by the secret intent of the parties the same to be to their own proper use and at their free disposition, coloured, nevertheless, by a fained countenance and show of words and sentences as though the same were made *bonâ fide* for good causes and upon just and lawful considerations:”—

Sect. 2. “ For remedy of which inconveniences, and for the avoiding of such fraudulent, fained and covinous conveyances, gifts, grants, charges, uses and estates, and for the maintenance of upright and just dealing in the purchasing of lands, tenements and hereditaments, Be it ordained and enacted by the authority of this present parliament, that all and every conveyance, grant, charge, lease, estate, incumbrance and limitation of use or uses of, in or out of any lands, tenements or other hereditaments whatsoever had or made any time heretofore sithence the beginning of the queen’s majesty’s reign that now is, or at any time hereafter to be had or made, for the intent and of purpose to defraud and deceive such person or persons, bodies politic or corporate, as have purchased or shall afterwards purchase in fee simple, fee tail, for life, lives or years the same lands, tenements and hereditaments, or any part or parcel thereof, so formerly conveyed, granted, leased, charged, incumbered or limited in use, or to defraud and deceive such as have or shall purchase any rent, profit or commodity in or out of the same, or any part thereof, shall be deemed and taken only as against that person and persons, bodies politic and corporate, his and their heirs, successors, executors, administrators and assigns, and against all and every other person and persons lawfully having or claiming by, from or under them or any of them which have purchased or shall hereafter so purchase for money or other good consideration the same lands, tenements or hereditaments, or any part or parcel thereof, or any rent, profit or commodity in or out of the same, to be utterly void, frustrate and of none effect, any pretence, colour, fained consideration or expressing of any use or uses to the contrary notwithstanding.”

Sect. 3. “ And be it further enacted by the authority aforesaid, that all and every the parties to such fained, covinous and fraudulent gifts, grants, leases, charges or conveyances before expressed, or being privy and knowing of the same or any of them, which, after the twentieth day of April next coming, shall wittingly and willingly put in ure, avow, maintain, justify or defend the same, or any of them, as true, simple, and done had or made *bonâ fide* or upon good consideration, to the disturbance or hindrance of the said purchaser or purchasers, lessees or grantees, or of or to the disturbance or hindrance of their heirs, successors, executors, administrators or assigns, or such as have or shall lawfully claim anything by, from or under them or any of them, shall incur the penalty and forfeiture of one year’s value of the said lands, tenements and hereditaments so purchased or charged, the one moiety whereof to be to the queen’s majesty, her heirs and successors, and the other moiety to the party or parties grieved by such fained and fraudulent gift, grant, lease, conveyance, incumbrance or limitation of use, to be recovered in any of the queen’s courts of record,

by action of debt, bill, plaint or information, wherein no essoin, protection or wager of law shall be admitted for the defendant or defendants, and also being thereof lawfully convicted, shall suffer imprisonment for one half year without bail or mainprise."

Sect. 4. " Provided also, and be it enacted by the authority aforesaid, that this act or anything therein contained shall not extend or be construed to impeach, defeat, make void or frustrate any conveyance, assignment of lease, assurance, grant, charge, lease, estate, interest, or limitation of use or uses, of, in, to or out of any lands, tenements or hereditaments heretofore at any time had or made, or hereafter to be had or made, upon or for good consideration and *bonâ fide* to any person or persons, bodies politic or corporate, anything before mentioned to the contrary hereof notwithstanding."

Sect. 5. " And be it further enacted by the authority aforesaid, that if any person or persons have heretofore sithence the beginning of the queen's majesty's reign that now is, made, or hereafter shall make any conveyance, gift, grant, demise, charge, limitation of use or uses, or assurance of, in or out of any lands, tenements or hereditaments, with any clause, provision, article or condition of revocation, determination or alteration, at his or their will or pleasure, of such conveyance, assurance, grants, limitations of uses or estates of, in or out of the said lands, tenements or hereditaments, or of, in or out of any part or parcel of them, contained or mentioned in any writing, deed or indenture of such assurance, conveyance, grant or gift; and after such conveyance, grant, gift, demise, charge, limitation of uses or assurance so made or had, shall or do bargain, sell, demise, grant, convey or charge the same lands, tenements or hereditaments, or any part or parcel thereof, to any person or persons, bodies politic and corporate, for money or other good consideration paid or given, (the said first conveyance, assurance, gift, grant, demise, charge or limitation, not by him or them revoked, made void or altered, according to the power and authority reserved or expressed unto him or them in and by the said secret conveyance, assurance, gift or grant,) that then the said former conveyance, assurance, gift, demise and grant, as touching the said lands, tenements and hereditaments so after bargained, sold, conveyed, demised or charged, against the said bargainees, vendees, lessees, grantees, and every of them, their heirs, successors, executors, administrators and assigns, and against all and every person and persons which have, shall or may lawfully claim any thing by, from or under them or any of them, shall be deemed, taken and adjudged to be void, frustrate and of none effect, by virtue and force of this present act."

Sect. 6. " Provided nevertheless, that no lawful mortgage made or to be made *bonâ fide*, and without fraud or covin, upon good consideration, shall be impeached or impaired by force of this act, but shall stand in the like force and effect as the same should have done if this act had never been had nor made; anything in this act to the contrary in anywise notwithstanding."

[Vide 35 Eliz. c. 2, being an act to restrain Popish recusants to some certain places of abode. The 5th section, which relates to the forfeiture of copyholds by recusant convicts, is extracted, ante, pt. 1, p. 88, n. (e). See also Co. Cop. s. 52, Tr. 121.]

[Vide 7 Jac. 1, c. 21. An act for confirmation of decrees thereafter to be made in the Exchequer Chamber and Duchy Court concerning customary or copyhold lands and tenements. A full extract from it is given in a note to *Brown & Rawlins*, 7 East, 431.]

21 JAC. I. c. 15.

“An act to enable judges and justices of the peace to give restitution of possession in certain cases.” [See 15 Ric. 2, c. 2; 8 Hen. 6, c. 9; 31 Eliz. c. 11.]

“Be it enacted by the authority of this present parliament, that such judges, justices or justice of the peace as by reason of any act or acts of parliament now in force are authorized and enabled, upon inquiry, to give restitution of possession unto tenants of any estate of freehold, or of their lands or tenements, which shall be entered upon with force, or from them withholden by force, shall by reason of this present act have the like and the same authority and ability from henceforth (upon indictment of such forcible entries or forcible withholdings before them duly found) to give like restitution of possession unto tenants for terms of years, *tenants by copy of court-roll*, guardians by knight service, tenants by elegit, statute merchant and staple, of lands or tenements by them so holden, which shall be entered upon by force, or holden from them by force” (e).

19 CAR. II. c. 6.

“An act for the redress of inconveniences by want of poof of the deceases of persons beyond the seas, or absenting themselves, upon whose lives estates do depend.” [See also 6 Anne, c. 18 (f).]

Sect. 1. “Whereas divers lords of manors and others have used to grant estates by copy of court-roll for one, two or more life or lives, according to the custom of their several manors, and have also granted estates by lease for one or more life or lives, or else for years, determinable upon one or more life or lives, and it hath often happened that such person or persons for whose life or lives such estates have been granted have gone beyond the seas, or so absented themselves for many years that the lessors and reversioners cannot find out whether such person or persons be alive or dead,

(e) Ante, pt. 1, p. 475, n. (b).

(f) Sed vide 3 & 4 Will. 4, c. 27, ss. 2, 3. See also *Nepean, Bart. v. Doc d. Knight*, Ex. Ch. Tr. T. 7 Will. 4, 2 Mee. & Well. 894, in which it was decided that

although the law presumes the death of a party who has been absent seven years without having been heard of, yet there is no legal presumption as to the time of his death; ante, pt. 1, p. 464, n. (a).

by reason whereof such lessors and reversioners have been held out of possession of their tenements for many years, after all the lives upon which such estates depended are dead, in regard that the lessors and reversioners, when they have brought actions for the recovery of their tenements, have been put upon it to prove the death of their tenants, when it is almost impossible for them to discover the same:”

Sect. 2. “For remedy of which mischief, so frequently happening to such lessors or reversioners, be it enacted by &c., that if such person or persons for whose life or lives such estates have been or shall be granted as aforesaid shall remain beyond the seas, or elsewhere absent themselves in this realm by the space of seven years together, and no sufficient and evident proof be made of the lives of such person or persons respectively in any action commenced for recovery of such tenements by the lessors or reversioners, in every such case the person or persons upon whose life or lives such estate depended shall be accounted as naturally dead, and in every action brought for the recovery of the said tenements by the lessors or reversioners, their heirs or assigns, the judges before whom such action shall be brought shall direct the jury to give their verdict as if the person so remaining beyond the seas, or otherwise absenting himself, were dead.”

Sect. 3. “And be it further enacted, that in any such action wherein the life or death of any such person or persons shall come in question between the lessor or reversioner and tenant in possession, it shall and may be lawful for the lessor or reversioner to take exception to any of the jurors returned for the trial of that cause, that the greatest part of the real estate of any of such jurors is held by lease or copy for lives, who upon proof thereof shall be set aside, as in case of other legal challenges.”

Sect. 5. “Provided always and be it enacted, that if any person or persons shall be evicted out of any lands or tenements by virtue of this act, and afterwards if such person or persons upon whose life or lives such estate or estates depend shall return again from beyond seas, or shall, on proof in any action to be brought for recovery of the same, be made to appear to be living, or to have been living at the time of the eviction, that then and from thenceforth the tenant or lessee who was ousted of the same, his or their executors, administrators or assigns shall or may re-enter, re-possess, have, hold and enjoy the said lands or tenements in his or their former estate, for and during the life or lives, or so long term as the said person or persons upon whose life or lives the said estate or estates depend shall be living, and also shall, upon action or actions to be brought by him or them against the lessors, reversioners or tenants in possession, or other persons respectively, which since the time of the said eviction received the profits of the said lands or tenements, recover for damages the full profits of the said lands or tenements respectively, with lawful interest for and from the time that he or they were ousted of the same lands or tenements, and kept and held out of the same by the said lessors, reversioners, tenants or other persons who after the said eviction received the profits of the said lands or tenements, or any of them respectively, as well in the case when the said person or persons upon whose life or lives such estate or estates

depend, are or shall be dead at the time of bringing of the said action or actions, as if the said person or persons were then living."

7 ANNE, c. 10.

"An act for rendering more effectual the laws concerning commissioners of sewers."

Sect. 1. "Whereas by the laws now in force concerning commissioners of sewers it is provided that if any person or persons, being assessed or taxed to any lot or charge for any lands, tenements or hereditaments within the limits of any such commission, do not pay the said lot and charge, according to the order and assignment of the commissioners, having power of the execution of the said commission, that then the said commissioners, for lack of payment of such lot and charge, may decree and ordain the said lands and tenements from the owner or owners thereof and their heirs, and the heirs of every of them, to any person or persons for term of years, term of life, fee simple or fee tail, for payment of the same lot and charge, the said decrees and ordinances to be executed in such manner as by the said laws now in force it is directed and appointed: And it is thereby provided, that the same decrees and ordinances shall bind all and every person and persons that at the making of the same decree had any interest in such lands, tenements and hereditaments, in use, possession, reversion or remainder, their heirs and feoffees and every of them, and shall also bind as well the lands, tenements and hereditaments of the King of England, as all and every other person and persons and their heirs, and such their interest as they shall fortune to have in any lands, tenements and hereditaments, or other casual profit, advantage or commodity, whatsoever they be, whereunto the said laws, ordinances and decrees shall in anywise extend, according to the true purport, meaning and intent of the said laws; but the said laws of sewers now in force have been found defective, in that sufficient power and authority is not thereby given to commissioners of sewers to make sale of *copyhold or customary* lands within the limits of their commission for the causes aforesaid: For remedy whereof be it enacted by &c., that from and after the 25th day of March, 1709, it shall and may be lawful to and for the commissioners authorized by commission from her majesty, her heirs and successors, or any six or more of them, to put in execution the laws now in force concerning sewers for non-payment of any lot or charge assessed or charged upon any copyhold or customary lands within the limits of their commission, and by the power and authority of the said commission of sewers to decree and ordain the said *copyhold or customary* lands so charged, from the owner or owners, and their heirs and the heirs of every of them, to any person or persons for such estate and interest therein as the said owner or owners thereof, or any claiming in remainder under them at the time of such decree made, had in the same copyhold lands, tenements and hereditaments, the said decrees to be made and executed as decrees concerning freehold lands are, by the said laws now in force, to be made and executed."

Sect. 2. "Provided always, that all and every person and persons to whom any such sale of *copyhold or customary* lands or tenements shall be made, shall, before such time as they or any of them shall enter or take any profit of the same lands or tenements, agree and compound with the lords of the manors of whom the same shall be holden, for such fines or incomes as heretofore have been most usual and accustomed to be yielded or paid therefore, and that upon every such agreement or composition the said lord for the time being, at the next court to be holden at or for the said manors, shall not only grant to such vendee or vendees, upon request, the same copyhold or customary lands or tenements, by copy of court-roll of the said manors, for such estate or interest as to them shall be so decreed or sold, and reserving the ancient rents, customs and services, but also shall in the same court admit them tenants of the same copyhold or customary lands as other copyholders of the same manors have been wont to be admitted, and to receive their fealty accordingly."

9 GEO. II. c. 36 (g).

"*An Act to restrain the disposition of lands, whereby the same become unalienable.*"

"Whereas gifts or alienations of lands, tenements or hereditaments in mortmain are prohibited or restrained by *Magna Charta* and divers other wholesome laws (h) as prejudicial to and against the common utility; nevertheless this public mischief has of late greatly increased by many large and improvident alienations or dispositions made by languishing or dying persons, or by other persons, to uses called *charitable uses*, to take place after their deaths, to the disherison of their lawful heirs: For remedy whereof be it enacted by &c., that from and after the twenty-fourth day of June, which shall be in the year of our Lord one thousand seven hundred and thirty-six, no manors, lands, tenements, rents, advowsons or other hereditaments, corporeal or incorporeal whatsoever, nor any sum or sums of money, goods, chattels, stocks in the public funds, securities for money, or any other personal estate whatsoever, to be laid out or disposed of in the purchase of any lands, tenements or hereditaments, shall be given, granted, aliened, limited, released, transferred, assigned or appointed, or any ways conveyed or settled to or upon any person or persons, bodies politic or corporate or otherwise, for any estate or interest whatsoever, or any ways charged or incumbered by any person or persons whatsoever, in trust or for the benefit of any charitable uses whatsoever, unless such gift, conveyance, appointment or settlement of any such lands, tenements or hereditaments, sum or sums of money or personal estate, (other than stocks in the public funds,) be and be made *by deed* indented, sealed and delivered in the presence of two or more credible witnesses, twelve *calendar* months at least before the death of such donor or grantor

(g) See this statute and the exposition thereof in Duke's Ch. Uses by Bridgman, pp. 197, 213, &c. And see ante, pt. 1, p. 196.

(h) Ante, pt. 1, p. 199.

(including the days of the execution and death) (i), and be inrolled in his Majesty's High Court of Chancery within six *calendar* months next after the execution thereof; and unless such stocks be transferred in the public books usually kept for the transfer of stocks six calendar months at least before the death of such donor or grantor (including the days of the transfer and death), and unless the same be made to take effect in possession for the charitable use intended immediately from the making thereof, and be without any power of revocation, reservation, trust, condition, limitation, clause or agreement whatsoever, for the benefit of the donor or grantor, or of any person or persons claiming under him."

Sect. 2. " Provided always, that nothing hereinbefore mentioned relating to the sealing and delivering of any deed or deeds twelve calendar months at least before the death of the grantor, or to the transfer of any stock six calendar months before the death of the grantor or person making such transfer, shall extend or be construed to extend to any purchase of any estate or interest in lands, tenements or hereditaments, or any transfer of any stock, to be made really and bonâ fide for a full and valuable consideration actually paid at or before the making such conveyance or transfer, without fraud or collusion."

Sect. 3. " And be it further enacted by the authority aforesaid, that all gifts, grants, conveyances, appointments, assurances, transfers and settlements whatsoever of any lands, tenements or other hereditaments, or of any estate or interest therein, or of any charge or incumbrance affecting or to affect any lands, tenements or hereditaments, or of any stock, money, goods, chattels or other personal estate or securities for money, to be laid out or disposed of in the purchase of any lands, tenements or hereditaments, or of any estate or interest therein, or of any charge or incumbrance affecting or to affect the same, to or in trust for any charitable uses whatsoever, which shall at any time, from and after the said twenty-fourth day of June, one thousand seven hundred and thirty-six, be made in any other manner or form than by this act is directed and appointed, shall be absolutely and to all intents and purposes null and void."

[Sect. 4 excepts out of the above provisions any dispositions to or in trust for either of the two Universities in England, or any of the colleges or houses of learning within either of them, or to or in trust for the colleges of Eton, Winchester or Westminster, for the better support of the scholars only on the foundations.]

9 GEO. IV. c. 85.

" An Act for remedying a defect in the titles of lands purchased for charitable purposes."

" Whereas by an act passed in the ninth year of the reign of his late Majesty King George the Second, and intituled *An Act to restrain the disposition of lands whereby the same become unalienable*, it was amongst other things enacted, that after the twenty-fourth day of June, one thousand

(i) See the next statute.

seven hundred and thirty-six, no manors, lands, tenements, rents, advowsons or other hereditaments, corporeal or incorporeal, whatsoever, should be given, granted, aliened, limited, released, transferred, assigned or appointed, or anyways conveyed or settled to or upon any person or persons, bodies politic or corporate or otherwise, for any estate or interest whatsoever, or anyways charged or incumbered by any person or persons whatsoever, in trust for the benefit of any charitable uses whatsoever, unless such gift, conveyance, appointment or settlement of any such lands, tenements or hereditaments were made by deed indented, sealed and delivered in the presence of two or more credible witnesses, twelve calendar months at the least before the death of such donor or grantor (including the days of the execution and death), and were enrolled in his Majesty's High Court of Chancery within six calendar months next after the execution thereof, and unless the same were made to take effect in possession for the charitable use intended immediately from the making thereof, and were without any power of revocation, reservation, trust, condition, limitation, clause or agreement whatsoever, for the benefit of the donor or grantor, or of any person or persons claiming under him; but it was thereby provided that nothing thereinbefore mentioned *relating to the sealing and delivery of any deed or deeds twelve calendar months at least before the death of the grantor* should extend or be construed to extend to any purchase of any estate or interest in lands, tenements or hereditaments, to be made really and *bonâ fide* for a full and valuable consideration actually paid at or before the making such conveyance, without fraud or collusion; and it was thereby enacted, that all gifts, grants, appointments, assurances, transfers and settlements whatsoever of any lands, tenements or other hereditaments, or of any estate or interest therein, or of any charge or incumbrance affecting or to affect any lands, tenements or hereditaments to or in trust for any charitable uses whatsoever, which should at any time after the said twenty-fourth day of June, one thousand seven hundred and thirty-six, be made in any other manner or form than by the said act was directed and appointed, should be absolutely and to all intents and purposes null and void: *And whereas the said provision contained in the said recited act, in relation to the purchase of any estate or interest in lands, tenements or hereditaments, for a full and valuable consideration, was only intended to prevent such purchases from being avoided by reason of the death of the grantor within twelve calendar months after the sealing and delivery of the deed or deeds relating thereto:* And whereas it has notwithstanding been generally apprehended that the said last mentioned provision was intended wholly to exempt such purchases from the operation of the said act, and in consequence thereof the formalities by the said act prescribed, in relation to the conveyance of hereditaments to charitable uses, have in divers instances been omitted on purchases for a full and valuable consideration, and by reason of such omission the title to such hereditaments may be considered defective: And whereas it is expedient that provision should be made for remedying such defect in manner hereinafter mentioned: May it therefore &c., and be it enacted by &c., that where any

(including the days of the execution and death) (i), and be inrolled in his Majesty's High Court of Chancery within six *calendar* months next after the execution thereof; and unless such stocks be transferred in the public books usually kept for the transfer of stocks six calendar months at least before the death of such donor or grantor (including the days of the transfer and death), and unless the same be made to take effect in possession for the charitable use intended immediately from the making thereof, and be without any power of revocation, reservation, trust, condition, limitation, clause or agreement whatsoever, for the benefit of the donor or grantor, or of any person or persons claiming under him."

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lands, tenements or hereditaments, or any estate or interest therein, have or has been purchased for a full and valuable consideration, in trust or for the benefit of any charitable uses whatsoever, and such full and valuable consideration has been actually paid for the same, every deed or other assurance already made for the purpose of conveying or assuring such lands, tenements or hereditaments, estate or interest as aforesaid, in trust or for the benefit of such charitable uses (if made to take effect in possession for the charitable uses intended immediately from the making thereof, and without any power of revocation, reservation, trust, condition, limitation, clause or agreement whatsoever, for the benefit of the grantor or of any person or persons claiming under him,) shall be as good and valid and of the same effect, both for establishing derivative titles and in all other respects, as if the several formalities by the said act prescribed had been duly observed and performed."

Sect. 2. "Provided always and be it further enacted, that nothing in this act contained shall extend to give effect to any deed or other assurance heretofore made, so far as the same has been already avoided by suit at law or in equity, or by any other legal or equitable means whatsoever, or to affect or prejudice any suit at law or in equity actually commenced for avoiding any such deed or other assurance, or for defeating the charitable uses in trust or for the benefit of which such deed or other assurance may have been made."

Sect. 3. "Provided also and be it further enacted, that nothing herein contained shall be construed to dispense with any of the said several formalities prescribed by the said recited act in relation to any deed or other assurance which shall be made after the passing of this present act."

52 GEO. III. c. 102.

"An Act for the registering and securing of charitable donations" (k).

"Whereas charitable donations have been given for the benefit of the poor and other persons in England and Wales to a very considerable amount, and many of the aforesaid donations appear to have been lost, and others, from the neglect of payment and the inattention of those persons who ought to superintend them, are in danger of being lost, or rendered very difficult to be preserved: Be it therefore enacted by," &c., "That a memorial or statement of the real and personal estate, and of the gross annual income, investment, and the general and particular objects of all and every charity and charities and charitable donations, for the benefit of any poor or other persons in any place in England and Wales, which shall have been founded, established, made, benefited, increased or secured,

(k) Vide stat. 43 Eliz. c. 4, of charitable uses, intituled "An act to redress the misemployment of lands, goods and stocks of money heretofore given to certain charitable uses: Duke's Ch. Uses, by Bridgman, p. 1; and the expositions of

that stat. by Sir F. Moore, ib. p. 122.

Vide also 52 Geo. 3, c. 101, "An act to provide a summary remedy in cases of abuses of trusts created for charitable purposes."

together with the names of the respective founders of or benefactors thereto, where known, and also of the person or persons in whose custody, possession or control the deeds, wills and other instruments whereby such charities or charitable donations shall have been founded, established, made, benefited, increased or secured, may be, and also of the names of the then trustee or trustees, feoffee or feoffees, possessor or possessors of such real or personal estate, shall, from and after six calendar months after the passing of this act, be registered by such person or persons who shall then be the trustee or trustees, feoffee or feoffees, possessor or possessors thereof, or some or one of such persons, in manner and in the form contained in the schedule to this act annexed, in the office of the clerk of the peace of the county, or city, or town, being a county of itself, within which such poor or other persons shall be; and such memorial or statement shall be signed by such person or persons causing the same to be registered, and left in the said office of such clerk of the peace, who shall forthwith transmit a duplicate or copy of the same unto the enrolment office of the High Court of Chancery."

Sect. 2. "And be it further enacted, that wherever any such charity or charitable donations shall be founded, established, made or benefited, increased or secured by any deed, will or other instrument hereafter to be made or executed by any person or persons, that then a like memorial or statement, according to the directions hereinbefore contained, shall be registered and left and transmitted as aforesaid by such person or persons as are hereinbefore mentioned, within twelve months after the decease of such person or persons by whom any such will, deed or deeds, or other instrument shall have been made or executed."

[Sect. 5 provides that if any charitable donation shall not be duly registered under that act, any two or more persons interested in the donation may complain thereof by petition to the Courts of Chancery or Exchequer, who shall hear and determine the same, and the order therein to be conclusive.]

[Sect. 9 gives the Court of Quarter Sessions power to extend the period for registering charitable donations, not exceeding six calendar months.]

[Sect. 10 provides that the act shall not extend to charitable donations not issuing out of or secured upon lands, tenements or hereditaments, or directed to be secured thereon, or to be permanently invested in government or any public stocks or funds, nor to donations which may be wholly or in part expended in the charitable purposes designed, at the discretion of the trustees, &c.]

[Sects. 11, 12, 13, provide that the act shall not extend to any hospital, school or other charitable institution, founded, improved, or regulated by or under the authority of the King or any of his predecessors, or of any special act of parliament thereunto particularly relating; nor to any charitable donation under the superintendence of any such hospital, school or institution; nor the governors of the corporation of the charity for the relief of poor widows and children of clergymen; nor to any friendly society, the

rules whereof shall have been confirmed according to the provisions of the act or acts for the encouragement and relief of friendly societies ; nor to either of the Universities of Oxford or Cambridge, nor to any college or hall thereto belonging, nor to any charitable bequest, devise, gift or foundation belonging thereto, or under the control, direction, superintendence or management of the said universities, or either of them, or any college or hall therein respectively ; nor to the Radcliffe Infirmary within the University of Oxford ; nor to the colleges of Westminster, Eton or Winchester ; nor to any cathedral or collegiate church within England and Wales ; nor to the Charter-house ; nor to the corporation of the Trinity-house of Deptford Stroud ; nor to any funds applicable to charitable purposes for the benefit of any persons of the Jewish nation ; nor to any charitable foundation or donation given to and for the benefit of any person or persons of the society or people called Quakers, and which shall be under the superintendence and control of persons of that persuasion ; nor to any charity or charitable donation or foundation, the accounts of the income and expenditure whereof shall have been directed to be annually passed in the High Court of Chancery ; nor to any charity or charitable donation or foundation, the annual gross income whereof did not exceed forty shillings, and of which the trustee or trustees, feoffee or feoffees, possessor or possessors, some or one of them, might, within six months after the passing of the act, deposit in the hands of the minister of the parish wherein any of the objects of such charity, charitable donation or foundation should be, a written memorial or statement in like form as in the schedule thereunto annexed is contained, and which by such minister should be forthwith deposited in the parish chest.]

Sect. 14. " And be it further enacted that where any body corporate, guild or fraternity shall be entrusted with the possession or distribution of divers charities or charitable donations or foundations, or of the rents and profits thereof, that in such cases all such charities, charitable donations and foundations may be registered and stated in one and the same memorial."

[Schedule to which the above act refers :]

" A memorial or statement in pursuance of an act for the registering and securing of charitable donations, whereby it is declared by the undersigned [*state the name or names of the persons who sign the memorial or statement*], that the real or personal estate [*state this as the case may be*] of the [*state the title or appellation of the charity or charitable donation*] consists of [*state this as the case may be, and if real estate, whether it be in lands, tenements or hereditaments, and of what tenure, and where the same are situate, or whether of any charge or incumbrance on any lands, tenements or hereditaments, and where situate, and if personal estate, describe the nature of it, and how secured*], and the gross annual income arising therefrom amounts to [*state the sum*], and the objects of which charity or charitable foundation are [*state the general or particular objects of the charity*], and which charity or charitable foundation was, according to the best of my [*or our, as the case may be,*] knowledge and belief, founded by [*state by*

whom, and if benefited, increased or secured by any other person, state the same and by whom], and the deeds, wills and other instruments [state this as the case may be, and if no deeds, wills or other instruments exist, state the same], are, to the best of my [or our, as the case may be], knowledge and belief, in the custody, possession or control [state this as the case may be] of [state the name of the body corporate or natural person], and the trustees, feoffees or possessors [state this as the case may be] of the said real and personal estate [state this as the case may be] are, to the best of my [or our, as the case may be,] knowledge and belief [state the name of the body corporate or natural person, as the case may be].

(Signed)

A. B.

C. D.

E. F.

Trustee or trustees, feoffees, possessor or possessors of the real or personal estate [*as the case may be*] of the charity or charitable donation hereby memorialized and registered."

31 GEO. II. c. 14.

"An act for further explaining the laws touching the electors of knights of the shire to serve in parliament for that part of Great Britain called England."

"Whereas by an act made in the eighteenth year of the reign of his present majesty, intituled *An act to explain and amend the laws touching the election of knights of the shire to serve in parliament for that part of Great Britain and Ireland called England*, it is enacted that no person shall vote at the election of any knight or knights of a shire within that part of Great Britain called *England*, or principality of *Wales*, without having a freehold estate in the county for which he votes of the clear yearly value of forty shillings over and above all rents and charges payable out of or in respect of the same: And whereas, notwithstanding the said act, certain persons who hold their estates by copy or [of] court roll pretend to have a right to vote, and have at certain times taken upon them to vote at such elections, be it therefore enacted by &c., "that from and after the 24th day of June, 1758, no person who holds his estate by copy of court roll (*l*) shall be intitled thereby to vote at the election of any knight or knights of a shire within that part of Great Britain called *England*, or principality of *Wales*; and if any person shall vote in any such election contrary to the true intent and meaning hereof, every such vote shall be void to all intents and purposes whatsoever; and every person so voting shall forfeit to any candidate for whom such vote shall not have been given, and who shall first sue for the same, the sum of fifty pounds, to be recovered

(*l*) But now see 2 W. 4, c. 45, s. 19, referred to, ante, pt. 1, p. 558, in n. (*z*); pt. 2, p. 561, n. (*b*).

N. B. A copyholder has been allowed to vote in respect of an allotment of common. Ante, pt. 1, p. 557.

by him or them, his, her or their executors and administrators, together with full costs of suit, by action of debt in any of his majesty's courts of record at Westminster, wherein no essoign, protection, wager of law, privilege or imparlance shall be admitted or allowed; and in every such action the proof shall lie on the person against whom such action shall be brought."

[The act contains other clauses regulating the mode of bringing the action, and limiting it to nine calendar months after the fact is committed].

39 & 40 GEO. III. c. 88.

"An act concerning the disposition of certain real and personal property of his majesty, his heirs and successors, and also of the real and personal property of her majesty, and of the queen consort for the time being."

Sect. 12. "And whereas divers lands, tenements and hereditaments have become and may hereafter become vested in his majesty, his heirs and successors, by escheat or otherwise, in right of the crown, which in the hands of any of his majesty's subjects would be chargeable with certain trusts or applicable to certain purposes, and his majesty, his heirs or successors, may be desirous that the same should be applied accordingly, notwithstanding any right which he or they may have to hold the same discharged from such trusts, or without applying the same to such purposes; but by reason of the provisions contained in the acts of the first year of her said late majesty Queen Anne, and the thirty-fourth year of his majesty's reign, doubts may be raised whether his majesty, his heirs or successors, can direct such application thereof: And whereas divers lands, tenements and hereditaments, as well freehold as *copyhold*, have escheated and may escheat to his majesty, his heirs or successors, for want of heirs of the persons last seized thereof or entitled thereto, or by reason of some forfeiture or otherwise, although not forfeited for treason or felony, and it is expedient to enable his majesty to direct the execution of any such trusts or purposes as aforesaid, and to make any grants of any such manors, lands, tenements or hereditaments as aforesaid, notwithstanding the provisions contained in the said recited acts; be it enacted, that it shall be lawful for his majesty, his heirs and successors, by warrant under his or their sign manual, to direct the execution of any trusts or purposes to which any manors, messuages, lands, tenements or hereditaments, which have escheated or shall escheat to his majesty, his heirs or successors, shall have been liable at the time the same so escheated respectively, or would have been liable in the hands of any of his majesty's subjects, and to make any grants of such manors, lands, tenements and hereditaments respectively to any trustee or trustees or otherwise for the execution of any such trusts, and to make any grants of any lands, tenements or hereditaments, which have escheated or shall escheat as aforesaid, to any person or persons, either for the purpose of restoring the same to any of the family of the person or persons whose estates the same had been, or of rewarding any persons or person making discovery of any

such escheat, as to his majesty, his heirs or successors respectively, shall seem fit, anything in the said acts or any of them to the contrary notwithstanding."

59 GEO. III. c. 94.

"An act to explain and amend two acts passed in the thirty-ninth and fortieth and forty-seventh years of his present majesty concerning the disposition of certain real and personal property of his majesty, his heirs and successors" (m).

Be it enacted &c., "That in all cases in which his majesty, his heirs or successors, hath or shall, in right of his crown or of his duchy of Lancaster, become entitled to any freehold or *copyhold* manors, messuages, lands, tenements or hereditaments, either by escheat for want of heirs, or by reason of any forfeiture, or by reason that the same have been or shall be purchased by or for the use of or in trust for any alien or aliens, it shall be lawful for his majesty, his heirs and successors, by warrant under his or their sign manual, or under the seal of the duchy or county palatine of Lancaster, according to the nature of the title to such manors, messuages, lands, tenements or hereditaments respectively, to direct the executions of any trusts or purposes to which the same may have been directed to be applied, and to make grants of such manors, messuages, lands, tenements or hereditaments, or any parts thereof, or of any rents or profits then due and in arrear to his majesty in respect thereof respectively, to any trustee or trustees or otherwise for the execution of any such trusts or purposes, or to any person or persons for the purpose of restoring the same to any of the family of the person or persons whose estates the same had been, or of carrying into effect any intended grant, conveyance or devise of any such person or persons in relation thereto, or of rewarding any person or persons, or his, her or their family, making discovery of any such escheat, or of his majesty's right and title thereto, as to his majesty, his heirs or successors shall seem fit, or to make any grant or grants of such manors, messuages, lands, tenements or hereditaments, or any part or parts thereof, to any person or persons, or his, her or their family making such discovery as aforesaid, or being of the family or considered or adopted as part of the family of any alien or aliens, or to any person or persons whose estate or property the same hereditaments have been, or being of the family or considered or adopted as part of the family of any such last-mentioned person or persons, and his or their heirs and assigns, unconditionally, or in consideration of money to be paid either at or before the execution of such grant or grants, or at any time or times subsequent thereto, and to such person or persons as his majesty, his heirs or successors, shall be pleased to direct; and such

(m) And see 6 Geo. 4, c. 17, for extending the provisions of this act, whereby an authority is given to his majesty, his heirs and successors, to direct the execu-

tions of grants of *leasehold* manors, &c., to which the crown may become intitled by reason of any forfeiture, or by having been purchased by or in trust for an alien.

money, if not paid at the execution of such grant or grants, to be a charge upon the manors, messuages, lands, tenements or hereditaments which shall be so granted, and to be secured by way of mortgage or trust, or in any other manner as his majesty, his heirs or successors, shall think proper or be advised, and such money to be applied for any of the purposes of this act; or to make any grant or grants of such manors, messuages, lands, tenements or hereditaments, or any of them, unto any trustee or trustees, his or their heirs and assigns, in trust to be sold, in such manner as his majesty, his heirs or successors, shall be pleased to direct; and that it shall be lawful for his majesty, his heirs or successors, to direct the rents and profits of any such manors, messuages, lands, tenements and hereditaments, and the money to arise by any sale or sales, or to be produced by any of the means aforesaid, to be applied in payment of any costs, charges and expenses incident to any commission or commissions for finding the title of his majesty, and to the making of any such grant, and for carrying the same, or any trusts or provisions thereof, into execution, or in rewarding any person or persons, or the family of any person or persons, making a discovery of any such escheat, forfeiture or purchase by an alien, or of his majesty's right and title thereto, or in discharging the whole or any part of any debt or debts, due from any alien, or any person or persons whose estate or property any such manors, messuages, lands, tenements or hereditaments have been, or for the use and benefit in whole or in part of any such alien, or of his or her family, or any part thereof, or of any person or persons adopted or considered by such alien as part of his or her family, or of any person or persons whose estate or property any such manors, messuages, lands, tenements or hereditaments have been, or his or their family, or any part thereof, or of any person or persons adopted or considered by such person or persons as part of his or her family, or for all or any of the purposes aforesaid, as to his majesty, his heirs or successors respectively, shall seem fit; and all grants heretofore made by his majesty, which would under the provisions of this act be good, valid and effectual, shall be and are hereby confirmed, and are hereby declared to be as good, valid and effectual, to all intents and purposes, as if the same had been made under the powers, provisions and authorities of this act, and as if such powers, provisions and authorities had been in full force and effect at the time of making such grants, anything in the said recited acts or any other act heretofore made to the contrary notwithstanding."

Sect. 2. "And be it further enacted, that the purchaser or purchasers of any manors, lands, tenements or hereditaments, sold under the authority of this act, or any person or persons paying any sum or sums of money under the authority of the same, or in pursuance of any grants to be made by virtue thereof, shall not be bound to see to the application or be answerable for the misapplication or nonapplication of the monies paid by them respectively."

Sect. 3. "Provided always and be it further enacted, that in every case where any surplus shall remain of any monies which may arise from any such sale or sales, or which shall be paid under the authority of this act by

any person or persons, after satisfying all such purposes as shall have been ordered and directed by his majesty, his heirs or successors, under the provisions of this act, shall be paid to the commissioners of the land revenue for the time being, to be applied by them in the same way and manner as the money arising from the sale of any manors, messuages, lands, tenements or hereditaments of or belonging to his majesty, his heirs or successors, is by the several acts now in force for the management and improvement of the land revenue of the crown, or of any of them, directed to be applied and disposed of."

4 & 5 WILL. IV. c. 23.

"An act for the amendment of the law relative to the escheat and forfeiture of real and personal property holden in trust."

"Whereas great inconvenience has been found to result to persons beneficially intitled to real or personal property by the escheating or forfeiture thereof to his Majesty, to corporations, to lords of manors, and others, in consequence of the death without heirs, or the conviction for treason or felony of a trustee in whom or in whose name the same is vested: And whereas it is expedient that the same should be remedied: And inasmuch as in order to avoid repetition, certain words are used in this act as describing subjects, some of which, according to their usual sense, such words would not embrace; for the understanding of the sense attached to them in this act, be it therefore enacted by &c., that the provisions of this act shall extend to and include the several estates and persons, matters and things hereinafter mentioned, (that is to say,) those relating to land, to any manor, messuage, tenement, hereditament or real property, whether freehold, customaryhold, copyhold, or of any tenure whatever; those relating to chattels, to personal property of every description capable of being transferred or disposed of otherwise than in books kept by any company or society, or to any share thereof or interest therein; those relating to stock, to any fund, annuity or security, transferable in books kept by any company or society established or to be established, or to any money payable for the discharge and redemption thereof, or to any share or interest therein; those relating to dividends, to interest, or other annual produce; those relating to a conveyance, to any lease and release, surrender, or other assurance of real property, including all acts and deeds necessary for making and perfecting the same; those relating to an assignment, to any surrender, delivery or other disposition of the personal property, and to all acts, deeds and things necessary for making and perfecting the same; those relating to a transfer, to any payment or other disposition of stock; those relating to an heir, to any devisee or other real representative, by the common law, or by custom, or otherwise; and those relating to an executor, to any administrator, or other personal representative; unless there be something in the subject or context repugnant to such construction; and whenever this act, in describing or referring to any trustee or other person, or any trust, land, stock, conveyance, assignment, transfer,

grant, matter, or thing, uses the word importing the singular number or the masculine gender only, the same shall be understood to include and shall be applied to several persons as well as one person, and females as well as males, and bodies corporate as well as individuals, and several trusts, lands, stocks, conveyances, assignments, transfers, grants, matters or things respectively, as well as one trust, land, stock, conveyance, assignment, transfer, grant, matter or thing respectively, unless there be something in the subject or context repugnant to such construction.

Sect. 2. "And be it enacted, that where any person seized of any land upon any trust or by way of mortgage dies without an heir, it shall be lawful for the Court of Chancery to appoint a person to convey such land in like manner as is provided by the act of the eleventh year of King George the Fourth and the first year of his present Majesty, intituled, 'An Act for amending the Laws respecting Conveyances and Transfers of Estates and Funds vested in Trustees and Mortgagees, and for enabling Courts of Equity to give effect to their Decrees and Orders in certain Cases,' in case such trustee or mortgagee had left an heir, and it was not known who was such heir; and such conveyance shall be as effectual as if there was such heir (*n*)."

Sect. 3. "And be it further enacted, that no land, chattels or stock vested in any person upon any trust or by way of mortgage, or any profits thereof, shall escheat or be forfeited to his Majesty, his heirs or successors, or to any corporation, lord of a manor, or other person, by reason of the attainder or conviction for any offence of such trustee or mortgagee, but shall remain in such trustee or mortgagee, or survive to his co-trustee, or descend or vest in his representative, as if no such attainder or conviction had taken place."

Sect. 4. "And be it enacted, that the several provisions of this act shall extend to every case of a trustee having some beneficial estate or interest in the same subject, or some duty as trustee to perform, and also to every case of a trust arising or resulting by implication of law, or by construction of equity."

Sect. 5. "Provided always, and be it hereby enacted, that nothing contained in this act shall prevent the escheat or forfeiture of any land, chattels or stock vested in any such trustee or mortgagee, so far as relates to any beneficial interest therein of any such trustee or mortgagee, but such land, chattels or stock, so far as relates to any such beneficial interest, shall be recoverable in the same manner as if this act had not passed."

Sect. 6. "And whereas it is expedient to relieve persons beneficially entitled to real or personal property which has already escheated or become forfeited to his Majesty, to corporations, to lords of manors, or others, by any of the means aforesaid; be it therefore enacted, that in all cases where before the passing of this act any person possessed of or entitled to any land, chattels or stock, or any right to or interest in any lands, chattels, or stock, as a trustee thereof, either in whole or in part, or

(*n*) Vide *Ex parte Whitton*, 1 Keen, ante, pt. 1, p. 83, n. (*g*), p. 526, n. 278; *Reg. v. Pitt*, 2 Per. & Dav. 385;

jointly with some other trustee or trustees, shall have died without an heir, or shall have been convicted of any offence whereby the said land, chattels or stock, or any of them, have escheated or been forfeited, or have become subject to any escheat or forfeiture, then and in every or any such case the said land, chattels or stock, or the right thereto or interest therein which hath escheated or been forfeited, or become subject to escheat or forfeiture by reason thereof, shall be subject to the order, control and disposition of the Court of Chancery, for the use of the party beneficially interested therein, in such manner, and subject in all respects to such rights and incidents, and to such orders and regulations of the said court, under the provisions of the said act of the eleventh year of King George the Fourth and of the first year of his present Majesty, as if such person so dead without an heir, or so convicted as aforesaid, were out of the jurisdiction of or not amenable to the process of the said court, without having been so convicted: Provided always, that nothing in this clause contained shall extend to any land, chattels or stock now vested in any person by virtue of any grant thereof made subsequently to the time when such escheat or forfeiture first occurred, or to any land, chattels or stock which more than twenty years prior to the passing of this act shall have been actually vested in possession or reduced into possession by the party entitled thereto by virtue of any such escheat or forfeiture.

39 & 40 GEO. III. c. 98.

“An act to restrain all trusts and directions in deeds or wills whereby the profits or produce of real or personal estate shall be accumulated, and the beneficial enjoyment thereof postponed beyond the time therein limited (o).”

Sect. 1. “Whereas it is expedient that all dispositions of real or personal estates whereby the profits and produce thereof are directed to be accumulated, and the beneficial enjoyment thereof is postponed, should be made subject to the restrictions hereinafter contained:” May it therefore please &c., and be it enacted by &c., “that no person or persons shall, after the passing of this act, by any deed or deeds, *surrender or surrenders*, will, codicil, or otherwise howsoever, settle or dispose of any real or personal property, so and in such manner that the rents, issues, profits or produce thereof shall be wholly or partially accumulated, for any longer term than the life or lives of any such grantor or grantors, settler or settlers, or the term of twenty-one years from the death of any such grantor, settler, devisor or testator (*p*); or during the minority or respective minorities of any person or persons who shall be living or in *ventre sa mère* at the time of the death of such grantor, devisor or testator; or during the minority or respective minorities only of any person or persons, who under the uses or

(o) See *Thellusson v. Woodford*, 4 Ves. 227.

(p) It has been decided that a trust by will for the accumulation of dividends

during the life of A., contrary to the statute, is good for twenty-one years; *Griffiths v. Vere*, 9 Ves. 127.

trusts of the deed, surrender, will or other assurances directing such accumulations, would for the time being, if of full age, be entitled unto the rents, issues and profits, or the interest, dividends, or annual produce so directed to be accumulated: And in every case where any accumulation shall be directed otherwise than as aforesaid, such direction shall be null and void, and the rents, issues, profits and produce of such property so directed to be accumulated shall, so long as the same shall be directed to be accumulated contrary to the provisions of this act, go to and be received by such person or persons as would have been entitled thereto if such accumulation had not been directed."

Sect. 2. " Provided always, and be it enacted, that nothing in this act contained shall extend to any provision for payment of debts of any grantor, settler or devisor, or other person or persons, or to any provision for raising portions for any child or children of any grantor, settler or devisor, or any child or children of any person taking any interest under any such conveyance, settlement or devise, or to any direction touching the produce of timber or wood upon any lands or tenements; but that all such provisions and directions shall and may be made and given as if this act had not passed."

Sect. 3. [Act not to extend to any disposition of hereditary property in Scotland.]

Sect. 4. [The restrictions to take effect as to wills made before the act, only where the testator should have been living and of sound mind after the expiration of twelve calendar months from the passing of the act.]

42 GEO. III. c. 116.

"An act for consolidating the provisions of the several acts passed for the redemption and sale of the land-tax into one act, and for making further provision for the redemption and sale thereof; and for removing doubts respecting the right of persons claiming to vote at elections for knights of the shire and other members to serve in parliament, in respect of messuages, lands or tenements, the land tax upon which shall have been redeemed or purchased."

Sect. 51. " And be it further enacted, that for the purpose of redeeming any land tax charged on any manors, messuages, lands, tenements or hereditaments belonging to any person or persons, (not being respectively bodies politic or corporate, or companies, or feoffees, or trustees for charitable or other public purposes,) whether such manors, messuages, lands, tenements or hereditaments shall be respectively situate in the same or in any other division or place in the same county, riding, shire or stewartry, or in any other county, riding, shire or stewartry, and whether such land-tax shall have been or shall be contracted for either before or on the said twenty-fourth day of June, one thousand eight hundred and two, by virtue of the said recited acts or any of them, or at any time thereafter by virtue of this act, it shall be lawful for all and every such person and persons who are, is or shall for the time being be seized or possessed or intitled

beneficially in possession to the rents and profits of, but who shall not have the absolute estate or interest in any manors, messuages, lands, tenements or hereditaments, or any *heriots, services*, emoluments or advantages issuing or payable from or in respect of any freehold or *copyhold or customary* messuages, lands, tenements or hereditaments, or incident thereto, or accruing therefrom, (other than and except tenants at rack rent for any terms of years, or from year to year, or at will, and tenants holding under the crown any lands or tenements within the survey and receipt of the exchequer, or the Duchy of Lancaster, or under the Duke of Cornwall any lands or tenements belonging to and parcel of the Duchy of Cornwall,) but nevertheless under the restrictions and regulations hereinafter mentioned, absolutely to sell and dispose of by public sale or private contract, and by *deed indented, and inrolled or registered in the manner prescribed by this act*, to convey, (either at one time for the purpose of making good the whole of the consideration for the redemption of any such land-tax, or at various times for the purpose of making good the respective instalments thereof as the same shall respectively become due, or any number of instalments at once as shall be most expedient,) any such manors, messuages, lands, tenements or hereditaments, or any such *heriots, services*, emoluments or advantages, whereof such person or persons shall be in the actual possession, or intitled beneficially to the rents and profits, as shall be eligible and necessary, whether of freehold or of *copyhold or customary tenure*, or holden for any term or terms of years, (other than for any term or terms of years at a rack rent,) and whether the manors, messuages, lands, tenements or hereditaments, *heriots, services*, emoluments or advantages so sold shall be charged or not charged with or shall be exempt from the payment of land tax, and if the same shall be charged with any land-tax, then freed and discharged from such land-tax; and it shall also be lawful for all and every such persons and person, who are or is or shall for the time being be in the actual receipt or perception of and beneficially entitled to the rents and services reserved or due and payable in respect and out of any manors, messuages, lands, tenements or hereditaments which shall have been or shall be granted by him, her or them, or any former owner or owners thereof, for any beneficial lease or leases, or by any copy or copies of the court roll, or demised according to the custom of any manor for life or lives, or years absolute, or years determinable on any life or lives, absolutely to sell and dispose of by public sale or private contract, and in like manner to convey (either at one time or at various times as aforesaid) the fee simple and inheritance of any such manors, messuages, lands, tenements or hereditaments, which shall have been or shall be so granted or demised for any beneficial lease or leases, or by any copy or copies of court roll, or by any other grant, according to the custom of any manor, for life or lives, or years absolute, or years determinable upon any life or lives, and also the rents and services and other profits reserved or payable upon or in respect of such leasehold or *copyhold* tenements or hereditaments, subject to the subsisting interests of the respective lessees, *copyholders or other customary tenants*, whether such last-mentioned manors,

messuages, lands, tenements or hereditaments shall be charged or not charged with, or shall be exempt from the payment of land tax, or whether the land tax charged thereon shall have been redeemed by the respective lessces or *copyholders*, or *customary tenants* thereof, or not, and if the same shall be charged with any tax, then freed and discharged from such land-tax; and it shall be lawful for all and every such persons and person by deed indented, and also enrolled or registered as herein is directed, and under the restrictions and regulations hereinafter mentioned, to convey or demise any of such freehold, *copyhold* or leasehold manors, messuages, lands, tenements or hereditaments, whereof they shall be in the actual possession, or beneficially entitled to the rents and profits as aforesaid, freed and discharged from land-tax, in case any land-tax shall be charged thereon, to any persons or person by way of mortgage, either in fee simple or for any term or terms of years, (*where the same shall not be of copyhold or customary tenure*,) for securing such sum or sums of money as shall be sufficient to redeem the land tax which hath been or shall be so contracted for by such person or persons as aforesaid, or to grant any rent-charge to be issuing out of and chargeable upon any such manors, messuages, lands, tenements or hereditaments as aforesaid, not exceeding the amount of the land-tax so contracted for as aforesaid: Provided always, that no sale, mortgage or grant of or out of any manors, messuages, lands, tenements or hereditaments shall be made by any such person or persons by virtue of this act, other than for the purpose of redeeming land-tax charged thereon, (in cases where the same shall be charged with any land-tax,) and also on other manors, messuages, lands, tenements or hereditaments which stand limited or settled, and subject to or for the same uses, trusts, intents or purposes, or in the same order or course of limitation as the manors, messuages, lands, tenements or hereditaments, which shall be so sold, mortgaged or charged as aforesaid, save and except as to such variations as may necessarily be occasioned by the difference in the nature of the tenure of freehold and *copyhold* estates.

[Sect. 52 authorizes tenants in tail of any manors or hereditaments in England to convey such part thereof as shall be deemed eligible and necessary to be sold for the purpose of redeeming the land-tax charged on such manors and hereditaments, by deed indented, and inrolled or registered in the manner prescribed by that act, and provides that such deed shall as effectually bar all estates tail and other estates in remainder, &c., as if such tenant in tail had levied a fine, or suffered a common recovery.]

Sect. 53. " Provided always and be it further enacted, that for the purposes aforesaid it shall be lawful for all committees and curators of lunatics or idiots, and guardians or tutors of infants, and all executors and administrators, curators or trustees whatsoever, seized or possessed of any manors, messuages, lands, tenements or hereditaments in trust, and having authority to act for infants, minors, issue unborn, femmes covert or other persons incapable by law or deed to act for themselves, on the behalf of such incapacitated persons respectively, and under the restrictions and regulations herein contained, to sell or mortgage and convey or grant any

rent-charge out of any manors, messuages, lands, tenements or hereditaments belonging to or limited or settled to the use or for the benefit of any such lunatics or idiots, infants or minors, issue unborn, femmes covert, or other incapacitated persons, which such lunatics or idiots, infants or minors, issue unborn (if *in esse*), femmes covert, or other incapacitated persons could or might have sold, mortgaged or charged with any rent-charge, for the purpose of redeeming any land-tax in respect of their estate or interest therein, either by virtue of this act or otherwise, if they respectively had not been under any such incapacity as aforesaid, and in the same manner in all respects as they respectively could or might have sold, or mortgaged and conveyed or charged the same."

Sect. 54. "And be it further enacted, that all sales, mortgages or grants in relation to estates in England which shall be made by virtue of this act by any person or persons, (other than bodies politic or corporate, or companies, or feoffees or trustees for charitable or other public purposes, and other than such person or persons holding under any grant from the crown, or any act of parliament, as hereinafter mentioned,) shall be made under the authority and with the consent and approbation of the commissioners for the time being acting in the execution of this act, by virtue of his majesty's warrant under the royal sign manual, for the county, riding or place in which the manors, messuages, lands, tenements or hereditaments which shall be so sold, mortgaged or charged shall be situate; and no such sale, mortgage or grant shall be valid or effectual, unless two at least of such commissioners shall certify their consent thereto, and approbation thereof, by signing and sealing the deed of sale, mortgage or grant, as parties thereto."

[Sect. 55 provides that no manors &c., in England shall be so sold, mortgaged &c., without one calendar month's previous notice in writing being given to the said commissioners by the person or persons desirous of making such sale &c., nor unless such person or persons shall previously to such sale &c., produce to the said commissioners a schedule in writing, declaring the quantity or duration of his, her or their estate or interest in the manors &c., whereon the land-tax proposed to be redeemed shall be charged, and, (if the same shall not be an estate of inheritance,) then the name or names of the bodies politic &c., or other person or persons next intitled to any beneficial interest in such manors &c., and of the person or persons having any mortgage, charge, lien or incumbrance thereon, and the amount thereof, and (if more than one) the priorities of the respective incumbrances.]

Sect. 57. "Provided also and be it further enacted, that nothing herein contained shall be construed to extend to enable any tenant for lives, or for years determinable on lives, or for years absolute, though not at rack-rent, to sell any part of the tenement demised, in case of a demise for which any fine or premium was paid, without the consent of the bodies politic or corporate, or companies, or other person or persons intitled to the immediate estate in reversion upon such demise."

[Sect. 59 provides that when any such sale as aforesaid shall be by

public auction, the commissioners shall cause ten days' previous notice at the least of such intended sale to be published in some newspaper usually circulated in the county, riding, stewartry or place wherein such manors &c., shall be situate; and that when any such sale shall be by private contract, such commissioners shall not certify their consent thereto, without having an estimate in writing, verified upon oath or solemn affirmation, (which any one of them may administer,) of the value of such part of the estate as shall be proposed to be sold, nor without being satisfied that the sale thereof will not materially injure the residue of the estate, and that the part proposed to be sold is proper under all circumstances for the purposes of the act.]

Sect. 60. "And be it further enacted, that it shall be lawful for any person or persons, (not being respectively bodies politic or corporate, or companies, or feoffees or trustees for charitable or other public purposes, and not holding under any grant from the crown, or any act of parliament as hereinafter is mentioned,) who are or shall be seized of or beneficially intitled to any manors in England, of which any *copyhold or customary estates* shall be holden, with the approbation of the Court of Chancery, to be signified by order upon a petition to be preferred in a summary way, to enfranchise any such copyhold or customary estates."

[Sect. 68 enacts that where the monies to be paid as the consideration for any sale, mortgage or grant to be made by any person or persons, (other than bodies politic or corporate, or companies, or feoffees or trustees for charitable or other public purposes,) shall not exceed the sum of one thousand pounds, the deed of sale, mortgage or grant, or the enrolment thereof, *and, in cases of copyhold or customary estates*, the deeds of sale, or of grant, or the admittance to such copyhold or customary estates, or any copy of the entry upon the court rolls of such deed of sale, or grant or admittance, shall not be liable to any stamp duty whatever; and that every deed of sale, or mortgage, and every surrender, grant and admittance of or to any messuages &c., sold by virtue of the therein recited acts for a consideration not exceeding one thousand pounds, and all copies of the entry upon the court rolls of any such surrenders, grants or admittances shall be valid, although no stamp duty may have been paid for the same.]

[Sect. 69 authorizes all bodies politic or corporate, and companies, and feoffees or trustees for charitable or other public purposes, (notwithstanding any restraint by any private statute, bye-law, &c.,) but under the restrictions and regulations thereinafter mentioned, for the purpose of redeeming any land-tax charged on any manors, &c., belonging to such bodies politic, &c., to sell by public sale or private contract, and by deed, indented and inrolled or registered in the manner required by the act, to convey any manors &c., whereof they may be in the actual possession or intitled beneficially, whether of freehold or *copyhold or customary* tenure, or holden for a term or terms of years otherwise than at rack-rent, and whether charged with or exempt from land-tax, and if so charged, then freed from such land-tax; and in like manner to convey the fee-simple and inheritance

of any manors &c., which shall have been granted and demised by them for any beneficial lease or leases, *or by copy or copies of court roll, or by any other grant according to the custom of any manor*, for life or lives, or years absolute, or years determinable upon any life or lives, and also the rents and services and other profits reserved or payable upon or in respect of such leasehold or *copyhold* tenements or hereditaments, (subject to the subsisting interests of the respective lessees, *copyholders* or *customary tenants*,) and whether charged or exempt from land-tax, and although the land-tax may have been redeemed by such lessees, &c, and if so charged, then discharged from such land-tax; and by the like deed to convey or demise any parts of such freehold, *copyhold* or *customary*, or leasehold manors &c., to any person or persons by way of mortgage, either in fee or for a term or terms of years, (where the same may not be of *copyhold* or *customary tenure*,) for securing such sum of money as shall be sufficient to redeem the land-tax to be contracted for; or to grant any rent-charge out of such manors, &c., not exceeding the land-tax contracted for: But no such sale, &c., to be made other than for the purpose of redeeming the land-tax charged on such manors, &c., (when charged with any land-tax,) and on other manors limited to the same uses, &c., except as to such variations as may necessarily be occasioned by the difference in the tenure of freehold and *copyhold* estates.]

Sect. 70. "And be it further enacted, that for the purpose of redeeming any such land-tax as aforesaid, it shall be lawful for all such bodies politic and corporate, and companies, and feoffees or trustees for charitable or other public purposes, by deed indented, and inrolled or registered as aforesaid, to enfranchise any messuages, lands, tenements or hereditaments *which are or shall be holden by copy of court roll or other customary tenure*, of any manor belonging to any such bodies politic or corporate, or companies, or feoffees or trustees for charitable or other public purposes, whether such manor be subject to any lease or not; and also to sell and dispose of any heriots or fee farm rents, chief rents or quit-rents, or other emoluments or advantages issuing or payable from or in respect of any freehold or *copyhold* or *customary* manors, messuages, lands, tenements or hereditaments, or incident thereto and accruing therefrom."

Sect. 71. "And be it further enacted, that where any person or persons holding under any grant from the crown, or under any act of parliament, any manors, messuages, lands, tenements or hereditaments, wherein his majesty, his heirs or successors, hath or shall have any estate, right or interest, in remainder, reversion or expectancy, (other than persons holding under the crown any manors, messuages, lands, tenements or hereditaments within the survey and receipt of the Exchequer, or the Duchy of Lancaster, or holding under the Duke of Cornwall any manors, messuages, lands, tenements or hereditaments belonging to and parcel of the Duchy of Cornwall, by virtue of any demise or grant *by copy of court roll* or otherwise, for life or lives, or for years determinable on any life or lives, or for any term of years absolute, or from year to year, or during pleasure,) have contracted or shall hereafter contract for the redemption of the land-tax

charged on any of such manors, messuages, lands, tenements or hereditaments, it shall be lawful for such person or persons, (being in the actual possession or intitled beneficially to the rents and profits of such manors, messuages, lands, tenements or hereditaments,) for the purpose of raising money to complete the redemption of the land-tax so contracted for, (but nevertheless under the restrictions and regulations hereinafter mentioned,) to sell and dispose of by public sale or private contract, and by deed indented, and inrolled or registered as herein is prescribed, to convey either at one time or at various times, as hereinbefore is mentioned, any of such manors, messuages, lands, tenements or hereditaments, whether the same shall be charged or not charged with land-tax, and if charged with any land-tax, then freed and discharged from such land-tax: and it shall also be lawful for such person or persons, for such purpose, and under such restrictions and regulations as aforesaid, to enfranchise any messuages, lands, tenements or hereditaments which are or shall be holden *by copy of court roll or other customary tenure*, of any such manors so holden by such person or persons as aforesaid, and also to sell and dispose of any heriots, fee-farm rents, chief rents or quit rents, or other emoluments or advantages issuing or payable from or in respect of any manors, lands, tenements or hereditaments, or incident thereto, or arising therefrom, anything herein contained to the contrary thereof notwithstanding: Provided always, that the manors, messuages, lands, tenements or hereditaments of which the land-tax shall be so redeemed, shall stand and be limited to and for the same uses, trusts, intents and purposes as the manors, messuages, lands, tenements or hereditaments, heriots, rents, emoluments or advantages which shall be sold, or the manors, of which any such *copyhold or customary* estates shall be enfranchised, stood or were limited at the time of such sale or enfranchisement."

Sect. 76. "And be it further enacted, that every sale, enfranchisement, mortgage or grant of any rent charge which shall be made of or out of any manors, messuages, lands, tenements or hereditaments, by virtue of this act, by any bodies politic or corporate, or companies, or any feoffees or trustees for charitable or other public purposes, or by any such person or persons holding under any grant from the crown, or under any act of parliament as aforesaid, shall be so made by, with and under the consent, sanction, control, direction and authority of the said last mentioned commissioners (*q*), and no further or other consent, authority, approbation or confirmation whatever shall be required to enable any such sales, enfranchisements, mortgages or grants as aforesaid: Provided always, that no such sale, mortgage, enfranchisement or grant shall be valid and effectual, unless two at least of the said commissioners shall certify their consent

(*q*) Viz. Special commissioners to be appointed by his majesty for regulating and approving sales, contracts, &c., by bodies politic or corporate and companies, and feoffees or trustees for charitable and

other public purposes, and sales, &c., of manors wherein the crown has any interest in remainder, &c. And see 54 Geo. 3, c. 173, s. 1 and 2, and 57 Geo. 3, c. 100, s. 22.

thereto and approbation thereof, by signing and sealing the deed of sale, enfranchisement, mortgage or grant, as parties thereto."

[Sect. 81 exempts from stamp duty all deeds or instruments whereby any sale, enfranchisement, mortgage or grant shall be made under the authority of the last-mentioned commissioners.]

Sect. 89. " And be it further enacted, that where any land-tax chargeable on any manors, messuages, lands, tenements or hereditaments *which are or shall be holden by copy of court roll or other customary tenure* of any manor or manors belonging to any body politic or corporate, or company, or any feoffees or trustees for charitable or other public purposes as aforesaid, by virtue of any lease or leases, shall have been or shall be redeemed by any such body politic or corporate, or company, or feoffees or trustees for charitable or other public purposes, under the powers contained in any of the said recited acts, or this act, the amount of the land-tax so redeemed or purchased shall be considered as rent reserved to such body politic or corporate, or company, or such feoffees or trustees for charitable or other public purposes as aforesaid, out of such *copyhold or customary* manors, messuages, lands, tenements or hereditaments, and be payable on the same days as such land-tax was payable before the redemption thereof, and the same powers shall be had, used and enjoyed for the recovery thereof as for the recovery of rent in arrear."

Sect. 93. " And be it further enacted, that where the fee simple and inheritance of any manors, messuages, lands, tenements or hereditaments holden under any beneficial lease or leases or *by copy of court roll*, as hereinbefore is mentioned, shall be proposed to be sold by virtue of this act, two calendar months' notice of such intended sale shall be given by the body politic or corporate, or company, or other person or persons proposing to sell the same, to the person or persons for the time being beneficially interested therein under the subsisting lease or leases, or *copy or copies of court roll thereof*, or to his, her or their committee or committees in cases of lunacy, or guardian or guardians in cases of infancy, or in any other cases of incapacity to the trustee or trustees, or other person or persons having authority to act for such person and persons incapable of acting for themselves; during which period of two months the person and persons so beneficially interested, or his, her or their committee or committees, guardian or guardians, trustee or trustees, or other person or persons having authority to act for him, her or them, on his, her or their behalf, shall be intitled to contract for the purchase thereof in preference to any other person or persons; and any one coparcener, or joint tenant, or tenant in common beneficially interested as aforesaid, shall have the like privilege of pre-emption in respect to the whole of the estate comprised in any such lease or *grant by copy of court roll*, on the refusal of any other coparcener, joint tenant or tenant in common to contract for the purchase of their respective shares; and such manors, messuages, lands, tenements or hereditaments shall not be sold to any other person or persons till after the expiration of such notice, unless the person or persons having the privilege of pre-emption on behalf of themselves or others shall, by writing

under his, her or their hand or hands, wave the same, in which case such fee simple and inheritance may be sold to any other person or persons at any time before the expiration of such notice: Provided always, that when any price shall have been offered for the purchase of any such manors, messuages, lands, tenements or hereditaments by any person or persons having such privilege of pre-emption as aforesaid, which shall not be accepted by the body politic or corporate, or company, or other person or persons proposing to sell the same, such manors, messuages, lands, tenements or hereditaments shall not at any time afterwards be sold to any other person or persons for a less price than the price so offered by the person or persons having such privilege of pre-emption as aforesaid, till after the expiration of two calendar months' further notice given to such last-mentioned person or persons of the sale proposed to be made at such reduced price, (and which further notice is hereby required to be given in every such case,) during which further period such person or persons shall have the like privilege of pre-emption as aforesaid of such manors, messuages, lands, tenements or hereditaments at such reduced price: Provided also, that if such person or persons shall wave such privilege of pre-emption in manner aforesaid, such manors, messuages, lands, tenements or hereditaments may be sold to any other person or persons at such reduced price at any time before the expiration of such period: Provided also, that every such notice to any committee of any lunatic, or any guardian of any infant, or any other person having authority to act for any incapacitated person, shall be as valid and effectual to enable the sale of such manors, messuages, lands, tenements or hereditaments to any person or persons not having any interest in the subsisting lease or grant thereof, after the expiration of such notice, (or sooner in case of the waiver of the privilege of pre-emption by any such committee, guardian or other person or persons having authority to act as aforesaid,) as if such notice or waiver had been given or made to or by any person or persons of capacity by law to act for themselves."

Sect. 94. "And be it further enacted, that no sale or mortgage of any *copyhold or customary* messuages, lands, tenements or hereditaments, by virtue of this act, shall extend or be construed to extend in anywise to prejudice or affect the right of any lord or lords, lady or ladies of any manor of which the same may be holden, to such fine or fines as shall have been usual and accustomed, and of right ought to be yielded and paid to such lord or lords, lady or ladies, upon any alienation of and admittance to such *copyhold or customary* messuages, lands, tenements or hereditaments, nor to authorize any purchaser or mortgagee of any such *copyhold or customary* messuages, lands, tenements or hereditaments to enter and take any rents or profits thereof by virtue of this act, until such fine or fines shall have been duly paid: Provided always, that upon the production of the deed of sale or mortgage, and upon the payment or tender of such fine or fines as aforesaid, the lord or lords, lady or ladies for the time being of any such manor shall, at the next or some subsequent court to be holden for such manor, upon request of the purchaser or mortgagee of any such *copyhold or customary* messuages, lands, tenements or heredi-

taments, not only grant the same to him, her or them, by copy of court roll, for such estate or interest as shall be sold or conveyed, reserving the usual and accustomed rents, customs and services, but shall also at the same court admit him, her or them tenant or tenants of the same *copyhold or customary* lands or tenements, as other copyholders of the same manors have been wont to be admitted, and to receive his, her or their fealty accordingly."

Sect. 118. "And be it further enacted, that in all cases where the land-tax charged upon any manors, messuages, lands, tenements or hereditaments belonging to any bodies politic or corporate, (other than bishops or other ecclesiastical corporations,) or to any companies or other person or persons, and granted out upon any beneficial lease or leases, or *by any copy or copies of court roll or other grant, according to the custom of any manor*, for life or lives, or years absolute, or years determinable upon any life or lives, shall be redeemed by the monies arising from the sale or sales of the fee simple and inheritance of any part of such manors, messuages, lands, tenements or hereditaments, then and in such case the respective manors, messuages, lands, tenements and hereditaments remaining unsold shall, immediately after the redemption of such land-tax, be and become charged and chargeable, for the benefit of such bodies politic or corporate, or companies, or other person or persons, with such yearly sum or sums respectively, by way of rent-charge, as shall be equal in amount to the land-tax charged thereon at the times of such redemption, which shall be applicable in their hands to the same uses and purposes, and in the same manner as the several yearly rents and profits of such manors, messuages, lands, tenements or hereditaments shall from time to time be applicable."

Sect. 119. "And be it further enacted, that every deed whereby any sale, mortgage or grant of any rent-charge shall be made by virtue of this act, in relation to estates in England, shall be inrolled within six calendar months after the execution thereof(*r*) in one of his Majesty's courts of record at Westminster, or in the courts of the counties palatine of Chester, Lancashire or Durham, or in the courts of Great Sessions in Wales, as the case shall require, or be registered in the counties of Middlesex and York in the manner required by law for conveyances of real estates situated in those counties respectively; and all deeds and conveyances in relation to estates in Scotland shall be executed and registered in the manner required by the law of Scotland, in respect of sales or charges of real estate: Provided always, that where the consideration expressed in any such deed shall not exceed two hundred pounds, the registry thereof with the proper officer appointed or to be appointed for the registry of contracts for the redemption of land-tax, shall be as valid and effectual as if the same were inrolled or registered in the manner hereinbefore directed, and such officer is hereby required to register the same gratis; and after the payment of the purchase or mortgage money into the Bank of England, or to the Re-

(*r*) See 54 Geo. 3, c. 173, s. 11, extending this period. Vide also 57 Geo. 3, c. 100, s. 24.

ceiver-General or his deputy in England, or to the collectors in Scotland, (in cases where the same is by this act authorized to be paid to any Receiver-General, or his deputy or collector,) in the manner hereinbefore directed, and after such inrolment or registry as aforesaid, every such deed of sale, mortgage or grant made by virtue of this act, shall be good, valid and effectual in the law to all intents and purposes whatsoever," &c.

53 GEO. III. c. 123.

"An act to amend and render more effectual several acts passed for the redemption and sale of the land-tax."

[Sect. 2 enacts, that the provisions in the act of 42 Geo. III. (see sects. 21 and 61, vide also sect. 93, ante, p. 937), under which bodies politic, and other persons in possession were permitted to contract for the redemption of land-tax, in preference to persons in remainder, &c., should cease; and that all bodies politic or corporate, or companies and persons aforesaid, might thereafter contract for and redeem such land-tax without preference to any of them otherwise than by priority of contract.]

[Sect. 31 enacts, that in order to provide for the purchase of any land-tax under the provisions of the act of 42 Geo. III. by bodies politic or corporate, or companies, or feoffees or trustees for charitable or other public purposes, it should be lawful for such bodies politic &c., to sell any lands, tenements or hereditaments belonging to them, or to mortgage the same, or to grant any rent-charge out of the same, or to enfranchise any messuages, &c., holden by copy of court roll or other customary tenure of any manor belonging to such bodies politic, &c., and to sell and dispose of any heriots or fee-farm rents, chief rents or quit rents, or other emoluments or advantages issuing or payable from or in respect of any freehold or copyhold or customary manors, or other hereditaments, or incident thereto or arising therefrom, under the same regulations as are mentioned in the act of 42 Geo. III.]

53 GEO. III. c. 142.

"An act to explain and amend several acts relative to the land-tax (s)."

Sect. 9. "And whereas by the said first recited act, passed in the thirty-eighth year of the reign of his present Majesty, the commissioners for putting in execution that act are empowered to seize and secure, and to sell and dispose of the *copyhold estates of collectors* under that act neglecting to pay sums of money by them received; but no provision is made by the said act for the manner of sale or transfer of the said copyhold estate, or for the admission of the purchasers thereof: Be it therefore enacted, that the commissioners for putting in execution the several acts relating to the

(t) Vide also 3 Geo. 4, c. 88, "to amend the law relating to the land and assessed taxes, and to regulate the ap- pointment of receivers-general in England and Wales."

land-tax shall, from and after the passing of this act, make conveyance of all such copyhold estates to the respective purchasers thereof, by deed indented, between any two or more of the said commissioners and the said purchasers respectively, and such sale shall be effectual to all intents and purposes, in like manner as the sale of copyhold estates of bankrupts, under and by virtue of statutes relating to bankrupts or any of them, by deed indented and inrolled: Provided always, that such person or persons to whom any such sale of copyhold lands shall be made shall, in like manner as the purchaser of the copyhold estates of bankrupts, before such time as he or they, or any of them shall enter or take any profit of the said lands or tenements, agree and compound with the lords of the manors of whom the same shall be holden, for such fines or incomes as heretofore have been most usual and accustomed to be yielded or paid therefore; and that upon every such agreement or composition, the said lords for the time being, at the next court to be holden at or for the said manors, shall not only grant to the said vendee or vendees, upon request, the same copyhold or customary lands or tenements, by copy of court roll of the same manors, for such estate or interest as to them shall be so sold, and reserving the ancient rents, customs and services, but also in the same court admit them tenants of the same copyhold or customary lands, as other copyholders of the same manors have been wont to be admitted, and to receive their fealty, suit or service, according to the custom of the court of such manor (t)."

STAMP ACT, 48 GEO. III. c. 149.—[2nd July, 1808.]

Sect. 22. "And be it further enacted, that from and after the 10th day of October, 1808, in all cases of the sale of any lands, tenements, rents, annuities, or other property real or personal, heritable or moveable, or of any right, title, interest or claim in, to, out of, or upon any lands, tenements, rents, annuities, or other property, where a duty is imposed on the conveyance thereof in the schedule hereunto annexed, in proportion to the amount of the purchase or consideration money therein or thereupon expressed, the full purchase or consideration money which shall be directly or indirectly paid, or secured, or agreed to be paid for the same, shall be truly expressed and set forth in words at length, in or upon the principal or only deed or instrument whereby the land or other thing sold shall be granted, assigned, transferred, released, renounced, or otherwise conveyed to or vested in the purchaser or purchasers, or any other person or persons, by his, her or their direction; and also where, upon the sale of any annuity, easement, servitude or other right, not before in existence, the same shall not be created by actual grant or conveyance, but shall only be secured by bond, warrant of attorney, covenant, contract or other security, the full purchase or consideration money which shall be directly or indirectly paid or secured, or agreed to be paid for the same, shall be truly expressed and set forth in words at length, in or upon the bond or other instrument or instruments by which the same shall be

(s) And see similar provisions, sects. 3 and 4 of the act of 3 Geo. 4, c. 88.

secured," [and in default of so setting forth the consideration, the purchaser and seller are subjected to a penalty of fifty pounds, and to the payment of five times the amount of the excess of duty which would have been payable in respect of the full purchase money, beyond the amount of the duty actually paid].

Sect. 30. "And be it further enacted, that from and after the 10th day of October, 1808, where any *copyhold or customary* lands or hereditaments shall be proposed to be surrendered in court, the person or persons proposing to surrender the same shall deliver to the steward of the manor or honour whereof such lands or hereditaments shall be holden, a note in writing, stating whether the surrender proposed is upon a sale or not upon a sale, and in the former case specifying the amount of the purchase or consideration money agreed upon for such lands or hereditaments, to the intent that the same may be inserted and set forth in words at length in or upon the copy of court roll to be afterwards made out of such surrender pursuant to the directions of this act; and until such note in writing shall be delivered, the lord or lady, or steward of the manor or honour, shall not accept or take the proposed surrender, on pain of forfeiting for every such offence the sum of fifty pounds; and where the proposed surrender shall be upon a sale, if the steward shall neglect to insert the said purchase or consideration money in or upon the copy of court roll to be afterwards made out of such surrender in words at length, he shall for every such offence forfeit the sum of fifty pounds; and if upon the sale of any such lands or hereditaments any person or persons shall, in the note so to be delivered as aforesaid, state the proposed surrender to be not upon a sale, he, she or they shall, for every such offence, forfeit the sum of one hundred pounds."

Sect. 31. "And be it further enacted, that from and after the said 10th day of October, where any *customary or copyhold* lands or hereditaments shall be intended to be conveyed to any person or persons (either upon the sale or mortgage thereof or otherwise) by means of a surrender made out of court, or by a deed of bargain and sale or other deed by commissioners named in a commission of bankrupt, or by executors or others by virtue of a power given by will or by act of parliament, the lord or lady, or steward of the manor or honour whereof such lands or hereditaments shall be parcel or be holden, shall not inrol any such surrender or deed, or accept any presentment thereof, or admit any persons to be tenant of such lands or hereditaments under or by virtue of the same respectively, unless such deed or surrender, or the memorandum of such surrender shall be duly stamped with the duty hereby charged thereon respectively, on pain of forfeiting, for every such offence, the sum of fifty pounds."

Sect. 32. "And be it further enacted, that if any lord or lady, or steward of any manor or honour shall, after the said 10th day of October, accept or take any surrender, or admit any person tenant of any *copyhold or customary* lands or hereditaments *out of court*, or make any voluntary grant of any such lands or hereditaments *out of court*, or grant any license to demise any such lands or hereditaments *out of court*, without causing the same or some memorandum thereof respectively to be put in writing on

vellum, parchment or paper, duly¹ stamped with the proper duty hereby charged thereon respectively, then and in every such case he or she shall, for every such offence, forfeit the sum of fifty pounds."

Sect. 33. "And be it further enacted, that in all cases of surrenders, admittances and voluntary grants of or to any *copyhold* or *customary* lands or hereditaments, and in all cases of licenses to demise any such lands or hereditaments which shall be taken, made or granted in court after the 10th day of October, 1808, the steward of the manor or honour whereof such lands or hereditaments shall be parcel or be holden, shall make out a copy of court roll of every such surrender, admittance, voluntary grant and license to demise, on vellum, parchment or paper, duly stamped according to the directions of this act, within four calendar months next after the surrender, admittance, voluntary grant or license shall be made or granted, and shall deliver the same to the party or parties entitled thereto, or any other person authorized to receive the same, whenever the same shall be called for after the expiration of such four calendar months; and if the same shall not be called for, then the steward shall deliver the same to the bailiff of the manor or honour, or to the crier of the court, or to some copyhold or customary tenant of the manor or honour, for the use of the party or parties entitled thereto, at the next general court to be holden for the said manor or honour; and if any such steward shall neglect to make out and deliver such copy or copies of court roll in the manner and within the time aforesaid (u), he shall forfeit the sum of fifty pounds for every such surrender, admittance, voluntary grant and license to demise, of which he shall neglect to make out and deliver a copy of court roll in the manner and within the time aforesaid; and the stamp duty payable in respect of every such copy of court roll shall be a debt to his majesty, his heirs and successors, of the steward so neglecting to make out and deliver the same, whether he shall have received the duty or not; and if he shall not have received the duty, the same shall also be a debt to his majesty, his heirs and successors, of the party or parties entitled to such copy of court roll; and the said steward shall also be bound to make out and deliver such copy of court roll to the party or parties entitled thereto whenever afterwards the same shall be demanded, without being paid any fees for the same; and if any fees shall have been previously paid to him for the same, such fees shall be deemed to have been paid without consideration, and the party or parties who paid such fees, his, her or their executors or administrators, shall be entitled to recover back the same in an action for money had and received to his, her or their use, with full costs of suit."

Sect. 34. "And be it further enacted, that it shall be lawful for the steward of any manor or honour, previously to the acceptance of any surrender, or the granting or making of any admittance, voluntary grant, or license to

(u) It is doubtful whether a steward who has made out copies, but neglected to deliver them as required by this clause, could maintain an action for his fees in

respect of them. *Underwood v. Woodhouse*, 1 Law Journ. N.S. (K.B.) 219. See ante, pt. 1, p. 396, n. (n).

demise, in court, from and after the 10th day of October, 1808, to demand and insist on the payment of his lawful fees for the same, and for the copy of court roll to be made out thereof, together with the stamp duty payable on such copy of court roll; and in case of non-payment of such fees and stamp duty, it shall be lawful for the lord or lady, or steward of the manor, to refuse to accept the surrender, or to grant the admittance or license, or to make the voluntary grant which shall be proposed or have been contracted for, until such fees or stamp duties shall be paid."

N. B.—The schedule annexed to this Act is repealed by the following Act.

STAMP ACT, 55 GEO. III. c. 184.—[11th July, 1815.]

Sect. 1 directs that the duties imposed on deeds, &c., by the last Act, should cease from the 31st of August, 1815.

Sect. 2 substitutes the duties in the schedule annexed to the present Act, from and after the 31st of August, 1815.

Sect. 8 enacts that the powers, provisions, penalties, &c., in former Acts shall extend to this Act.

Sect. 30 exempts from the *ad valorem* duty all conveyances made after the 31st of August, 1815, of property contracted to be sold before the 12th of April, 1808, which under the provisions of the Act of 48th Geo. III. should have been exempted from the *ad valorem* duty thereby granted.

Sect. 31. Also exempts the conveyances of annuities or rent charges on the re-purchase thereof.

SCHEDULE.

Part the First.

CONVEYANCE, whether grant, disposition, lease, assignment, transfer, release, renunciation, or of any other kind or description whatsoever, *upon the sale* of any lands, tenements, rents, annuities (*x*), or other property, real or personal, heritable or moveable, or of any right, title, interest or claim in, to, out of or upon any lands, tenements, rents, annuities, or other property, that is to say, for and in respect of *the principal or only deed, instrument or writing*, whereby the lands or other things sold shall be granted, leased, assigned, transferred, released, renounced or otherwise conveyed to, or vested in the pur-

(*x*) It was held by the Court of B. R. in *Doe d. Chapeau Bourne and others v. Reynolds and another*, 2 Nev. & Mann. 383, that a copy of admittance of a surrenderee in trust for the grantee of an annuity, stated to be secured by the bond of the purchaser, and subject thereto to the use of the purchaser, his executors,

administrators and assigns, required an *ad valorem* stamp in respect of the purchase money expressed to be paid by the purchaser to the surrenderor, but without reference to the annuity, whether the statement was taken to refer to an annuity already granted, or to an annuity to be created in futuro.

chaser or purchasers, or any other person or persons, by his, her or their direction.

	£.	s.	d.
Where the purchase or consideration money therein or thereupon expressed shall not amount to 20l.	0	10	0
And where the same shall amount to 20l. and not amount to 50l.	1	0	0
And where the same shall amount to 50l. and not amount to 150l.	1	10	0
And where the same shall amount to 150l. and not amount to 300l.	2	0	0
And where the same shall amount to 300l. and not amount to 500l.	3	0	0
And where the same shall amount to 500l. and not amount to 750l.	6	0	0
And where the same shall amount to 750l. and not amount to 1,000l.	9	0	0
And where the same shall amount to 1,000l. and not amount to 2,000l.	12	0	0
And where the same shall amount to 2,000l. and not amount to 3,000l.	25	0	0
And where the same shall amount to 3,000l. and not amount to 4,000l.	35	0	0
And where the same shall amount to 4,000l. and not amount to 5,000l.	45	0	0
And where the same shall amount to 5,000l. and not amount to 6,000l.	55	0	0
And where the same shall amount to 6,000l. and not amount to 7,000l.	65	0	0
And where the same shall amount to 7,000l. and not amount to 8,000l.	75	0	0
And where the same shall amount to 8,000l. and not amount to 9,000l.	85	0	0
And where the same shall amount to 9,000l. and not amount to 10,000l.	95	0	0
And where the same shall amount to 10,000l. and not amount to 12,500l.	110	0	0
And where the same shall amount to 12,500l. and not amount to 15,000l.	130	0	0
And where the same shall amount to 15,000l. and not amount to 20,000l.	170	0	0
And where the same shall amount to 20,000l. and not amount to 30,000l.	240	0	0
And where the same shall amount to 30,000l. and not amount to 40,000l.	350	0	0
And where the same shall amount to 40,000l. and not amount to 50,000l.	450	0	0

	£.	s.	d.
And where the same shall amount to 50,000 <i>l.</i> and not amount to 60,000 <i>l.</i>	550	0	0
And where the same shall amount to 60,000 <i>l.</i> and not amount to 80,000 <i>l.</i>	650	0	0
And where the same shall amount to 80,000 <i>l.</i> and not amount to 100,000 <i>l.</i>	800	0	0
And where the same shall amount to 100,000 <i>l.</i> or upwards (y)	1,000	0	0

And where any freehold lands or hereditaments in *England* shall be conveyed by a deed of feoffment, with or without any letter or letters of attorney therein contained to deliver or receive seizin, or by a deed of *bargain and sale inrolled*, such deed of feoffment or bargain and sale, unless accompanied with a lease and release, shall be charged with a *further* duty as follows :

	£.	s.	d.
If the purchase or consideration money therein or thereupon expressed shall be under 20 <i>l.</i>	0	10	0
If it shall amount to 20 <i>l.</i> and not amount to 50 <i>l.</i>	0	15	0
If it shall amount to 50 <i>l.</i> and not amount to 150 <i>l.</i>	1	0	0
If it shall amount to 150 <i>l.</i> or upwards	1	15	0

But if there shall be both a feoffment and a bargain and sale inrolled, then the said further duty shall not attach on either.

Note.—The purchase or consideration money is to be truly expressed and set forth in words at length, in or upon every such principal or only deed or instrument of conveyance.

And where any lands or other property, of *different tenures or holdings*, or *held under different titles*, contracted to be sold at one entire price for the whole, shall be conveyed to the purchaser in separate parts or parcels by different deeds or instruments, the purchase or consideration money shall be divided and apportioned in such manner as the parties shall think fit, so that a distinct price or consideration for each separate part or parcel may be set forth in or upon the principal or only deed or instrument of conveyance relating thereto, which shall be charged with the said *ad valorem* duty in respect of the price or consideration money therein set forth.

And where any lands or other property contracted to be purchased by two or more persons jointly, or by any person for himself and others, or wholly for others, at one entire price for the whole, shall be conveyed, in parts or parcels, by separate deeds or instruments, to the persons for whom the same shall be purchased, for distinct parts or shares of the purchase money, the principal or only deed or instrument of conveyance of each separate part or parcel shall be charged with the said *ad valorem* duty in respect of the sum of money therein specified as the consideration for the

(y) As the act specifies only definite gross sums, a conveyance in consideration of an annuity would seem to be a *casus omissus*, and not to require an *ad valorem* duty. Ante, 944, n. (x).

same. But if separate parts or parcels of such lands or other property shall be conveyed to or to the use of or in trust for different persons in and by one and the same deed or instrument, then such deed or instrument shall be charged with the said *ad valorem* duty in respect of the aggregate amount of the purchase or consideration monies therein mentioned to be paid or agreed to be paid for the lands or property thereby conveyed.

And where any person having contracted for the purchase of any lands or other property, but not having obtained a conveyance thereof, shall contract to sell to any other person, and the same shall in consequence be conveyed immediately to the sub-purchaser, the principal or only deed or instrument of conveyance shall be charged with the said *ad valorem* duty in respect of the purchase or consideration money therein mentioned to be paid or agreed to be paid by the sub-purchaser.

And where any person, having contracted for the purchase of any lands or other property, but not having obtained a conveyance thereof, shall contract to sell the whole or any part or parts thereof to any other person or persons, and the same shall in consequence be conveyed by the original seller to different persons in parts or parcels, the principal or only deed or instrument of conveyance of each part or parcel thereof shall be charged with the said *ad valorem* duty, in respect only of the purchase or consideration money which shall be therein mentioned to be paid or agreed to be paid for the same by the person or persons to whom or to whose use, or in trust for whom the conveyance shall be made, without regard to the amount of the original purchase money.

And in all cases of such sub-sales as aforesaid, the sub-purchasers, and the persons immediately selling to them, shall be deemed and taken to be the purchasers and sellers, within the intent and meaning of the provisions and regulations of the aforesaid act of the 48th year of his majesty's reign, relating to the *ad valorem* duties on conveyances on the sale of property thereby imposed, and which are to be observed and enforced with regard to the said *ad valorem* duties hereby granted.

But where any sub-purchaser shall take an actual conveyance of the interest of the person immediately selling to him, which shall be chargeable with the said *ad valorem* duty in respect of the purchase or consideration money paid, or agreed to be paid by him, and shall be duly stamped accordingly, any deed or instrument of conveyance to be afterwards made to him of the property in question by the original seller, shall be exempted from the said *ad valorem* duty, and be charged only with the duty on deeds or instruments of the same kind not upon a sale.

And where any lands or other property separately contracted to be purchased of different persons, at separate and distinct prices, shall be conveyed to the purchaser, or as he shall direct, in and by one and the same deed or instrument (x); such deed or instrument shall be charged with the

(x) It should seem by this clause that one conveyance of freeholds will suffice from different vendors, the aggregate amount of the purchase monies being the rule for affixing an *ad valorem* stamp; but surely distinct deed stamps would be re-

said *ad valorem* duty in respect of the aggregate amount of the purchase or consideration monies therein mentioned to be paid or agreed to be paid for the same.

And where any lands or other property shall be sold and conveyed, in consideration, wholly or in part, of any sum of money charged thereon by way of mortgage, wadset or otherwise, and then due and owing to the purchaser, or shall be sold and conveyed subject to any mortgage, wadset, bond, or other debt, or to any gross or entire sum of money to be afterwards paid by the purchaser, such sum of money or debt shall be deemed the purchase or consideration money, or part of the purchase or consideration money, as the case may be, in respect whereof the said *ad valorem* duty is to be paid.

And to prevent doubts respecting what shall be deemed the principal deed or instrument of conveyance in certain cases, it is hereby declared,

That where any lands or hereditaments in England shall be conveyed by bargain and sale inrolled, and also by lease and release, or feoffment with or without any such letter or letters of attorney therein contained as aforesaid, the release or feoffment shall be deemed the principal deed, and the bargain and sale shall be charged only with the duty hereby imposed on deeds in general (see *Deed*). But the same shall not be inrolled or be available, unless also stamped for testifying the payment of the *ad valorem* duty on the release or feoffment.

And where any lands or hereditaments shall be conveyed by lease and release, and also by feoffment with or without any such letter or letters of attorney therein contained as aforesaid, the release shall be deemed the principal deed, and the feoffment shall be charged only with the duty hereby imposed on deeds in general (see *Deed*). But the same shall not be available, unless also stamped for testifying the payment of the *ad valorem* duty on the release.

And where any *copyhold* or *customary* estate shall be conveyed by a deed of bargain and sale by the commissioners named in a commission of bankrupt, or by executors or others by virtue of a power given by will, or by act of parliament, or otherwise, where a surrender shall not be necessary, the deed of bargain and sale shall be deemed the principal instrument.

And in other cases of copyhold or customary estates, the surrender or voluntary grant, or the memorandum thereof respectively, if made out of court, or the copy of court roll of the surrender or voluntary grant, if made in court, shall be deemed the principal instrument (a).

And copies of court roll made after the 31st day of August, 1815, of surrenders and voluntary grants made in court before or upon that day, and subsequent to the 10th day of October, 1808, shall be charged with the said *ad valorem* duties. But copies of court roll of surrenders and voluntary

quisite to make the conveyance evidence as to all the estates after that first described.

N. B. A distinct stamp is requisite for

each distinct surrender of copyholds contained in the same piece of vellum, parchment or paper; post, 951.

(a) Post, 952.

grants made before or upon the 10th day of October, 1808, shall not be liable thereto.

And grants, and copies of court roll of grants, of copyhold or customary estates for a life or lives are to be charged, as well as those for any greater interest (*b*).

And where in Scotland there shall be a disposition or assignation executed by the seller, and any other instrument or instruments, writing or writings, to complete the title, the disposition or assignation shall be deemed the principal instrument.

And where, upon the sale of any annuity or other right not before in existence, the same shall not be created by actual grant or conveyance, but shall only be secured by bond, warrant of attorney, covenant, contract, or otherwise, the bond or other instrument by which the same shall be secured, or some one of such instruments, if there be more than one, shall be deemed and taken to be liable to the same duty as an actual grant or conveyance.

And in the case of leases or tacks, where a yearly rent of £20 or upwards shall be reserved as part of the consideration for the same, there shall be charged a further duty, for which see title *Lease*.

And where the principal or only deed or instrument of conveyance, together with any schedule, receipt, or other matter, put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further *progressive* duty of 1 0 0

And where there shall be several deeds, instruments or writings for completing the title of the property sold, such of them as are not liable to the said *ad valorem* duty shall be charged with the duty to which the same may be liable under any general or particular description of such deeds, instruments or writings contained in this schedule.

And where, in any case not hereby expressly provided for, of several deeds, instruments or writings, a doubt shall arise which is the principal, it shall be lawful for the parties to determine for themselves which shall be so deemed, and to pay the said *ad valorem* duty thereon accordingly; and, if necessary, the other deeds instruments or writings on which the doubt shall have arisen, shall be stamped with a particular stamp for denoting or testifying the payment of the *ad valorem* duty, upon all the deeds or instruments being produced, and appearing to be duly stamped in other respects.

And where there shall be duplicates of any deed or instrument chargeable with the said *ad valorem* duty exceeding £2, one of them only shall be charged therewith, and the other or others shall be charged with the ordinary duty on deeds or instruments of the same kind not upon a sale; and on the whole being produced, duly stamped as hereby required, the latter shall also be stamped with a particular stamp for denoting or testifying the payment of the said *ad valorem* duty.

And where any deed or instrument, operating as a conveyance on the

sale of any property, shall operate also as a conveyance of any other than the property sold by way of settlement, or for any other purpose, or shall also contain any other matter or thing besides what shall be incident to the sale and conveyance of the property sold, or relate to the title thereto, every such deed or instrument shall be charged, in addition to the duty to which it shall be liable as a conveyance on the sale of property, and to any progressive duty to which it may also be liable, with such further stamp-duty as any separate deed, containing the other matter, would have been chargeable with, exclusive of the progressive duty.

Exemptions from the the preceding duties on conveyances upon the sale of lands, &c.

All surrenders and other instruments relating only to copyhold or customary estates, whose clear value shall not exceed twenty shillings, but which are hereinafter otherwise charged.

All transfers of shares in the stock and funds of the governor and company of the Bank of England, and of the South Sea and East India Companies, but which are hereinafter otherwise charged.

All leases and tacks in consideration of a fine or grassum, for a life or lives not exceeding three, or for a term of years determinable with a life or lives not exceeding three, by whomsoever granted.

All leases in consideration of a fine for a term absolute, not exceeding twenty-one years, granted by ecclesiastical corporations, aggregate or sole.

And all voluntary grants made by the lord or lady of any manor of any copyhold, or customary lands or hereditaments for a life or lives, for a pecuniary consideration, and the copies of court-roll of such voluntary grants.

All which leases, tacks, grants and copies are hereinafter charged with ordinary duty.

[The act exempts from the preceding and all other stamp duties, except the duty on the receipt for the consideration money, conveyances of rents purchased under the act 34 Geo. 3, c. 75, s. 14, for the better management of the land revenue of the crown, and for the sale of fee-farm rents, &c., on subsequent sales thereof to the owners of the lands charged therewith, where the consideration money does not exceed £10.]

COPYHOLD estates; and *customary* estates, passing by surrender and admittance, or by admittance only, and not by deed; instruments relating thereto, not otherwise charged under the head of mortgage, or of conveyance upon the sale of lands, viz. :

Any surrender made out of court, or the memorandum thereof, where the clear yearly value of the estate shall exceed twenty shillings 1 0 0

And where the same shall not exceed twenty shillings . 0 5 0

See also *Conveyance* upon the sale of lands, &c., and *Mortgage*.

Any admittance out of court, or the memorandum thereof, where the clear yearly value of the estate shall exceed twenty shillings 1 0 0

And where the same shall not exceed twenty shillings . 0 5 0

And where both a surrender and admittance, or more than one surrender or admittance, or the memorandum thereof, shall be contained in the same piece of vellum, parchment or paper, whether upon a sale, mortgage or other occasion, the proper duty shall be paid in respect to each surrender and each admittance (c).

And where any surrender or admittance, or the memorandum thereof, together with any schedule, receipt, or other matter, put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further progressive duty of 1 0 0

The copy of court roll of any surrender made in court, where the clear yearly value of the estate shall exceed twenty shillings, 1 0 0

And where the same shall not exceed twenty shillings, 0 5 0

See also *Conveyance* upon the sale of lands &c., and *Mortgage*.

The copy of court roll of any admittance in court, where the clear yearly value of the estate shall exceed twenty shillings, 1 0 0

And where the same shall not exceed twenty shillings, 0 5 0

And where copies of both a surrender and admittance, or of more than one surrender or admittance, shall be contained in the same piece of vellum, parchment or paper, whether upon a sale, mortgage or other occasion, the proper duty shall be paid in respect of each surrender and each admittance, except in the case of a recovery hereinafter provided for (c).

c. *This doubt is correct Tenement v Gardner 2 Jur. 2. S. 4. 394* *See also 2 Jur. 2. S. 4. 394*
 (c) It has been doubted whether this clause does not require a distinct stamp for each separate copyhold included in one surrender or admittance, but the author submits that the only object of it was to impose a separate stamp on each surrender and each admittance, without any distinction between the case of a surrender of, or an admittance to one entire copyhold, and that of a surrender of, or an admittance to an estate held by two or more distinct copies.

copyhold (of the like value), mentioned in any surrender, admittance, or instrument of admittance, *whereupon a several fine should be payable to the lord, or a several fee payable to the steward*, a distinct and several stamp duty should be charged.

This construction is favoured by the qualification in 38 Geo. 3, c. 85, of the provisions of the act of 37 Geo. 3, c. 90, in respect to the multiplication of stamps on surrenders of and admittances to copyhold estates, and by the total repeal of both those acts by the stat. 44 Geo. 3, c. 98.

N. B. By the 11th sect. of the act of 37 Geo. 3, it was provided that for and in respect of each and every copyhold tenement of the value of 20s. *per annum* or upwards, mentioned in any surrender, admittance, or copy of court roll of any honour or manor, and each and every custom-right or tenant-right tenement, not being

And by the 1st sect. of the act of 38 Geo. 3, it was provided that distinct and several stamp duties should not be required, except in those cases where the tenements mentioned in the same surrender, admittance, copy or instrument of admittance, should before the passing of the said act [37 Geo. 3] have been surrendered, granted or conveyed in and by different surrenders, admittances, copies or instruments of admittance, in which cases a several and distinct stamp duty should be charged in respect of each and every such tenement of the value of 20s. *per annum* or upwards, which at any time thereafter should be added to any other tenement, or mentioned therewith to be surrendered, granted or conveyed in or by the same surrender, admittance, copy or instrument of admittance.

And where the copy of any such surrender or admittance, together with any schedule, receipt or other matter put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further *progressive* duty of 1 0 0

The copy of court roll of the several surrenders, admittances and other acts, which shall take place in court, for the purpose of perfecting a *common recovery* of any entailed copyhold or customary estate or estates, tenement or tenements, from the surrender to make a tenant of the *præcipe*, down to the admittance of the tenant in tail in fee, or to the admittance for life of the former tenant for life, with remainder to the tenant in tail in fee, upon the surrender of the demandant, both inclusive; or from the surrender to make a tenant to the *præcipe*, inclusive, to the admittance of the tenant in tail, or tenant for life, otherwise than as aforesaid, or to the admittance of any other person, upon the surrender of the demandant, exclusive; where the clear yearly value of the estate shall exceed twenty shillings,

Five times 1 0 0

And where the same shall not exceed twenty shillings,

Five times 0 5 0

And if the copy of court roll of any other admittance or surrender, admittances or surrenders, shall be contained in the same piece of vellum, parchment or paper, with the copy of court roll of the several surrenders, admittances, and other acts for the purpose aforesaid; the same shall be charged with such and the same duty or duties, as if the same had been written upon a separate piece of vellum, parchment or paper, over and above the said duties hereby imposed on the copy of court roll of the recovery (e).

Any *voluntary grant* by the lord or lady or steward of any manor, made *out of court*, or the memorandum thereof, with or without admittance thereon; where the clear yearly value of the estate shall exceed twenty shillings, Twice 1 0 0

And where the same shall not exceed twenty shillings, Twice 0 5 0

See also *conveyance* upon the sale of lands, &c., and *mortgage* (f).

The *copy of court roll* of any voluntary grant made in court by the lord or lady, or steward of any manor, with or without admittance thereon;—where the clear yearly value of the estate shall exceed twenty shillings, Twice 1 0 0

And where the same shall not exceed twenty shillings, Twice 0 5 0

See also *conveyance* upon the sale of lands &c., and *mortgage* (f).

And where any voluntary grant, or the memorandum or copy of court roll thereof, together with any schedule, receipt or other matter put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further *progressive* duty of . . . 1 0 0

Any *license* to demise, or the memorandum thereof, if granted out of

(e) This and the preceding clause are affected by the 3 & 4 Will. 4, c. 74, for the abolition of fines and recoveries.
(f) Ante, p. 948.

court; and the *copy of court roll* of any license to demise, if granted in court; where the clear yearly value of the estate shall exceed twenty shillings, 1 0 0
And where same shall not exceed twenty shillings, 0 5 0

Exemptions from the preceding and all other stamp duties.

Original surrenders out of court, and copies of court roll of surrenders in court, to the uses of a will, or to a trustee for the uses or purposes of a will.

The court rolls or books of any manor, wherein the proceedings relating thereto shall be entered or minuted.

See also the general exemptions at the end of this part of the schedule.

EXCHANGE.—Any deed whereby any lands or other hereditaments or heritable subjects in England or Scotland shall be conveyed, or any *copyhold or customary* lands or hereditaments in England shall be covenanted to be surrendered, *in exchange* for other lands or hereditaments or heritable subjects ;

If no sum of money, or only a sum under 300*l.* shall be paid or agreed to be paid for equality of exchange, the ordinary duty of 1 15 0

And if a sum of 300*l.* or upwards shall be paid or agreed to be paid for equality of exchange,

{

The same *ad valorem* duty as for a conveyance on the sale of lands for a sum of money equal to the sum so paid or agreed to be paid.

And where any such deed of exchange, together with any schedule, receipt or other matter put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further *progressive* duty of,

If the deed be liable in the first instance to a duty of 1*l.* 15*s.*, 1 5 0
Or if liable to a higher duty in the first instance, 1 0 0

And any duplicate of any such deed of exchange shall be charged with the same duty or duties ; and if the exchange shall be effected or secured by separate conveyances, or covenants by distinct deeds, each deed shall be charged with the same duty or duties.

And in case there shall be more than one deed for completing the title to the lands or other hereditaments, or heritable subjects conveyed by either party, the principal deed only shall be charged under this head of exchange ; and any subordinate or collateral deed shall be charged with the duty to which it may be liable under any other description in this schedule.

MEMORIAL to be registered pursuant to any act of parliament, made or to be made for the public registering of deeds and conveyances in England, 0 10 0

And for every piece of vellum, parchment or paper upon which any such memorial shall be written, after the first, a further *progressive* duty of 0 10 0

MEMORIAL to be registered or inrolled, pursuant to act of parliament, of any deed or instrument, deeds or instruments, whereby any annuity shall be granted or secured in England, 1 0 0

And for every piece of vellum, parchment or paper, upon which any such memorial shall be written, after the first, a further *progressive* duty of 1 0 0

MORTGAGE, conditional surrender by way of mortgage, further charge, wadset and heritable bond, disposition, assignation or tack, in security, and eik to a reversion, of or affecting any lands, estate or property, real or personal, heritable or moveable whatsoever ;

Also any deed containing an obligation to infest any person in an annual rent, or in lands or other heritable subjects, in Scotland, under a clause of reversion, but without any personal bond or obligation therein contained for payment of the money or stock intended to be secured ;

Also any conveyance of any lands, estate or property whatsoever, in trust to be sold or otherwise converted into money, which shall be intended only as a security, and shall be redeemable before the sale or other disposal thereof either by express stipulation or otherwise, except where such conveyance shall be made for the benefit of creditors generally, or for the benefit of creditors specified, who shall accept the provision made for payment of their debts in full satisfaction thereof, or who shall exceed five in number ;

Also any defeazance, letter of reversion, back bond, declaration or other deed or writing for defeating or making redeemable or explaining or qualifying any conveyance, disposition, assignation or tack, of any lands, estate or property whatsoever, which shall be apparently absolute, but intended only as a security ;

Also any agreement, contract or bond, accompanied with a deposit of title deeds, for making a mortgage, wadset, or any such other security or conveyance as aforesaid, of any lands, estate or property, comprised in such title deeds, or for pledging or charging the same as a security ;

And also any deed, whereby a real burthen shall be declared or created on lands or heritable subjects in Scotland ;

Where the same respectively shall be made as a security for the payment of any definite and certain sum of money, advanced or lent at the time, or previously due and owing or forborne to be paid, being payable ;

Not exceeding 50 <i>l</i>.	. . . . .	1 0 0
Exceeding 50 <i>l</i> . and not exceeding 100 <i>l</i>.	. . . . .	1 10 0
Exceeding 100 <i>l</i> . and not exceeding 200 <i>l</i>.	. . . . .	2 0 0
Exceeding 200 <i>l</i> . and not exceeding 300 <i>l</i>.	. . . . .	3 0 0
Exceeding 300 <i>l</i> . and not exceeding 500 <i>l</i>.	. . . . .	4 0 0
Exceeding 500 <i>l</i> . and not exceeding 1,000 <i>l</i>.	. . . . .	5 0 0

Exceeding 1,000 <i>l.</i> and not exceeding 2,000 <i>l.</i>	.	.	.	6	0	0
Exceeding 2,000 <i>l.</i> and not exceeding 3,000 <i>l.</i>	.	.	.	7	0	0
Exceeding 3,000 <i>l.</i> and not exceeding 4,000 <i>l.</i>	.	.	.	8	0	0
Exceeding 4,000 <i>l.</i> and not exceeding 5,000 <i>l.</i>	.	.	.	9	0	0
Exceeding 5,000 <i>l.</i> and not exceeding 10,000 <i>l.</i>	.	.	.	12	0	0
Exceeding 10,000 <i>l.</i> and not exceeding 15,000 <i>l.</i>	.	.	.	15	0	0
Exceeding 15,000 <i>l.</i> and not exceeding 20,000 <i>l.</i>	.	.	.	20	0	0
Exceeding 20,000 <i>l.</i>	.	.	.	25	0	0

And where the same respectively shall be made as a security for the repayment of money to be thereafter lent, advanced or paid, or which may become due upon an account current, together with any sum already advanced or due, or without, as the case may be, other than and except any sum or sums of money to be advanced for the insurance of any property comprised in such mortgage or security against damage by fire, or to be advanced for the insurance of any life or lives, pursuant to any agreement in any deed, whereby any annuity shall be granted or secured for such life or lives ;

If the total amount of the money secured or to be ultimately recoverable thereupon shall be uncertain and without any limit, . . . 25 0 0

But if the total amount of the money secured or to be ultimately recoverable thereon shall be limited not to exceed a given sum, [*the same duty as on a mortgage or wadset for such limited sum.*]

And wheré the same respectively shall be made as a security for the transfer or retransfer of any share in any of the government or parliamentary stocks or funds, or in the stock and funds of the governor and company of the Bank of England, or of the East India Company, or the South Sea Company, in consideration of stock or money advanced or lent at the time, or previously due and owing, or forborne to be paid, being payable, [*the same duty as on a mortgage or wadset for a sum of money, equal to the value of the stock or fund secured, according to the average price thereof on the day of the date of the mortgage or other instrument aforesaid, or on either of the ten days preceding.*]

And where the same respectively shall be made as a security for the payment of a sum of money, and also for the transfer or retransfer of a share in any of the said stocks or funds, the said *ad valorem* duty shall be charged in respect of each.

And in case the same respectively shall be made as a security for the payment or transfer, to different persons, of separate and distinct sums of money or shares in any of the said stocks or funds, the said *ad valorem* duty shall be charged for and in respect of each separate and distinct sum of money, or share in any of the said stocks or funds therein specified and secured, and not upon the aggregate amount thereof.

And where any such mortgage or wadset, or other instrument hereby charged with the same duty as a mortgage or wadset, together with any schedule, receipt or other matter put or indorsed thereon or annexed thereto, shall contain 2,160 words or upwards, then for every entire quan-

tity of 1,080 words contained therein, over and above the first 1,080 words,
a further *progressive* duty of 1 0 0

MORTGAGE, &c.—Any transfer or assignment, disposition or assignation, of any mortgage or wadset, or of any such other security as aforesaid, or of the benefit thereof, and of the money or stock thereby secured, in all cases where the person entitled to the right of redemption or reversion shall not be made a party to such transfer or assignment, disposition or assignation, and also where the person who originally made the mortgage, wadset or other security, shall continue entitled to the right of redemption or reversion, and shall be made a party to such transfer or assignment, disposition or assignation, provided no further sum of money or stock be added to the principal money or stock already secured, 1 15 0

And in all other cases, such transfer or assignment, disposition or assignation, shall be charged with *the same duty or duties as an original mortgage, wadset or other security.*

And where any such transfer or assignment, disposition or assignation, hereby charged with a duty of 1*l.* 15*s.*, together with any schedule, receipt or other matter put or indorsed thereon or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further and *progressive* duty of (*f*) 1 5 0

Provided always, that where several distinct deeds or instruments, falling within the description of any of the instruments hereby charged with the said *ad valorem* duty on mortgages and wadsets, shall be made *at the same time* for securing the payment or transfer of one and the same sum of money, or one and the same share of any of the stocks or funds before mentioned, the said *ad valorem* duty, if exceeding 2*l.*, shall be charged only on one of such deeds or instruments, and all the rest shall be charged with the duty to which the same may be liable under any more general description of such deeds or instruments contained in this schedule; and if required for the sake of evidence, all the rest of such deeds or instruments shall be also stamped with some particular stamp, for denoting or testifying the payment of the said *ad valorem* duty, on all the said deeds or instruments being produced duly stamped with the duties hereby charged thereon.

And where any copyhold or customary lands or hereditaments shall be mortgaged by means of a conditional surrender or grant, the said *ad*

(*f*) Note.—The duties imposed by this act on the transfer of mortgages, (as well as the duties on transfer of mortgages in Ireland under 56 Geo. 3, c. 56,) were repealed by 3 Geo. 4, c. 117, and a stamp duty of 1*l.* 15*s.* in England, and 1*l.* British

currency in Ireland, on the first skin, substituted; but the act re-imposed the *ad valorem* duty in respect of any sum added to the principal already secured. See extract from 3 Geo. 4, c. 117, post.

valorem duty shall be charged on the surrender or grant, or the memorandum thereof, if made out of court; or on the copy of court roll of the surrender or grant, if made in court. And copies of court roll, made after the 31st day of August, 1815, of surrenders and grants made in court before or upon that day, and subsequent to the 10th day of October, 1808, shall be charged with the said *ad valorem* duties. But copies of court roll of surrenders and grants made before or upon the 10th day of October, 1808, shall not be liable thereto.

And where any copyhold or customary lands or hereditaments shall be mortgaged or charged, together with other property, for securing one and the same sum of money, or one and the same share of any of the stocks or funds before mentioned, the said *ad valorem* duty shall be charged on the deed or instrument relating to the other property (*g*).

And where there shall be duplicates of any deed or instrument chargeable with the said *ad valorem* duty on mortgages and wadsets, exceeding 2*l.*, one of them only shall be charged therewith, and the other or others shall be charged with the duty to which the same may be liable under any more general description in this schedule; and on the whole being produced duly stamped as hereby required, the latter shall also be stamped with a particular stamp for denoting or testifying the payment of the said *ad valorem* duty.

Exemptions from the said ad valorem duty on mortgages, &c., but not from any other duty to which the same may be liable.

Any deed or other instrument made in pursuance of and conformable to any agreement, contract or bond charged with, and which shall actually have paid the said *ad valorem* duty, or the *ad valorem* duty on mortgages granted by the act of the 48th year of his Majesty's reign before mentioned, [c. 149].

Any deed or other instrument made for the further assurance only of any estate or property already mortgaged, pledged or charged as a security by any deed or instrument, which shall have paid the said *ad valorem* duty hereby charged, or the *ad valorem* duty on mortgages or heritable bonds, imposed by the act of the 44th or the act of the 48th year of his Majesty's reign before mentioned.

Any deed or other instrument made as an additional or further security for any sum or sums of money, or any share or shares of any of the stocks or funds before mentioned, already secured by any deed or instrument, which shall have paid the said *ad valorem* duty hereby charged, or the *ad valorem* duty on mortgages or heritable bonds, charged by the said act of the 44th [c. 98] or the said act of the 48th year of his Majesty's reign, to be exempt from the said *ad valorem* duty hereby charged, so far as regards

(*g*) So that where a sum was secured by an assignment of personalty and a surrender of copyholds, it was held that the *ad valorem* stamp was to be affixed to the assignment, and that such deed being im-

pressed with a 1*l.* stamp only (the *ad valorem* stamp being on the surrender) ought not to have been received in evidence. *Reed v. Wilmot*, 7 Bing. 581.

such sum or sums of money, or such share or shares of any of the said stocks or funds before secured, in case such additional or further security shall be made by the same person or persons who made the original security; but if any further sum of money or stock shall be added to the principal money or stock already secured, or shall be thereby secured to any other person, the said *ad valorem* duty shall be charged in respect of such further sum of money or stock (*h*).

And if necessary for the sake of evidence, the deeds and instruments hereby exempted from the said *ad valorem* duty shall be stamped with a particular stamp, for denoting or testifying the payment of the *ad valorem* duty, upon all the deeds and instruments relating to the particular transaction being produced, and appearing to be duly stamped with the duties to which they were liable.

For general exemptions from the preceding and all other stamp duties, see the end of this part of the schedule.

MORTGAGE, wadset, &c., with a conveyance of the equity or right of redemption or reversion, or other matter *in the same deed*; viz.,

Where any deed or writing shall operate as a mortgage or other instrument hereby charged with the *ad valorem* duty on mortgages, and also as a conveyance of the equity or right of redemption or reversion of any lands, estate or property therein comprised, to or in trust for or according to the direction of a purchaser, such deed or writing shall be charged not only with the said *ad valorem* duty on mortgages, but also with the *ad valorem* duty hereinbefore charged on a conveyance upon the sale of any property; but where the equity or right of redemption or reversion shall be thereby conveyed or limited in any other manner, such deed or writing shall be charged only as a mortgage.

And in all other cases, where a mortgage or other instrument hereby charged with the *ad valorem* duty on mortgages shall be contained in one and the same deed or writing with any other matter or thing (*except what shall be incident to such mortgage or other instrument*), such deed or writing shall be charged with the same duties (except the progressive duty) as such mortgage or other instrument and such other matter or thing would have been separately charged with, if contained in separate deeds or writings.

And where any such deed or writing as is mentioned in the two preceding clauses, together with any schedule, receipt or other matter put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further *progressive* duty of . . . 1 0 0

PARTITION.—Any deed whereby any lands or other hereditaments or heritable subjects in England or Scotland shall be conveyed, or any *copyhold or customary* lands or hereditaments in England shall be covenanted to be surrendered, in order to effect a *partition or division*

(*h*) See sect. 3 of 3 Geo. 4, c. 117, post.

thereof among co-parceners, joint tenants, or tenants in common, heirs, portioners, conjux fiars, or joint proprietors of any sort ;

If no sum of money, or only a sum under 300*l.* shall be paid, or agreed to be paid, for equality of partition or division, the ordinary duty of,

1150

And if any sum or sums of money, amounting to 300*l.* or upwards, shall be paid, or agreed to be paid, for equality,

{ The same *ad valorem* duty as for a conveyance on the sale of lands for a sum of money equal to the amount of the sum or sums so paid or agreed to be paid.

And where any such deed of partition or division, together with any schedule, receipt, or other matter put or indorsed thereon or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further *progressive* duty of,

If the deed is liable, in the first instance, to a duty of 1*l.* 15*s.*, 1 5 0
Or if liable to a higher duty in the first instance, 1 0 0

And any duplicate of any such deed of partition or division shall be charged with the same duty or duties.

And in case there shall be no more than one deed for completing the title to the estate or interest conveyed by either party, the principal deed only shall be charged under this head of partition ; and any subordinate or collateral deed shall be charged with the duty to which it may be liable under any other description in this schedule.”

3 GEO. IV. c. 117.

“ *An act to reduce the stamp duties on reconveyances of mortgages, and in certain other cases ; and to amend, &c.*”

Sect. 2. “ And be it further enacted, that from and after the expiration of ten days next after the passing of this act, in lieu and instead of the duties by this act repealed, there shall be granted, raised, levied, collected and paid unto his Majesty, his heirs and successors, the several sums of money and duties following, that is to say, upon any transfer, assignment, disposition, assignation or reconveyance of any mortgage, or of any other security in the said acts and the schedules thereto annexed, in that respect severally mentioned, or of the benefit thereof, or of the money or stock thereby secured, provided no further sum of money or stock be added to the principal money or stock already secured, there shall be paid in Great Britain a stamp duty of 1*l.* 15*s.*, and in Ireland a stamp duty of 1*l.* British currency, for the first skin or piece of vellum or parchment, or sheet or piece of paper, upon which such transfer, assignment, disposition, assignation or reconveyance shall be engrossed, written or printed ; and where any such transfer or assignment, disposition or assignation, in Great Britain, hereby charged with the duty of 1*l.* 15*s.*, together with any schedule, receipt or other matter put or indorsed thereon or annexed thereto,

shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, there shall be paid a further progressive duty of 1*l.* 5*s.*; and for every skin or piece of vellum or parchment, or sheet or piece of paper beyond the first, upon which any such transfer, assignment or reconveyance shall be engrossed, written or printed in Ireland, there shall be paid the sum of 10*s.* British currency; and if any further sum of money or stock shall be added to the principal money or stock already secured, the *ad valorem* duty on mortgages, payable under the said recited acts respectively, shall be charged only in respect of such further money or stock."

Sect. 3. "And be it further enacted, that where any deed or other instrument already made or hereafter to be made as an additional or further security for any sum or sums of money, or any share or shares in any of the government or parliamentary stocks or funds, or in the stock and funds of the Governor and Company of the Bank of England or of the Bank of Ireland, already or previously secured by any bond on which the *ad valorem* duty on bonds, charged by the said recited acts of the fifty-fifth and fifty-sixth years of the reign of his said late Majesty, and the schedules thereto respectively annexed, shall have been paid, such deed or other instrument shall be and be deemed to be and to have been exempt from the several *ad valorem* duties charged by the said acts, and the said schedules respectively on mortgages, and shall be charged and chargeable only with the ordinary duty payable on deeds in general in Great Britain and Ireland respectively; but if any further sum of money or stock shall be added to the principal money or stock already secured, the said *ad valorem* duties respectively shall be charged in respect of such further sum of money or stock; and if necessary for the sake of evidence, the deeds and instruments hereby exempted from the said *ad valorem* duties shall be stamped with a particular stamp for denoting or testifying the payment of the *ad valorem* duty upon all the deeds and instruments relating to the particular transaction, provided such deeds and instruments shall be produced at the stamp-office in London or Dublin (as the case may require), and shall appear to be duly stamped with the duties to which they are liable."

53 GEO. III. c. 141.

"An act to repeal an act of the 17th year of the reign of his present Majesty, intituled 'An act for registering the grants of life annuities, and for the better protection of infants against such grants;' and to substitute other provisions in lieu thereof."

'Whereas it is expedient that an act passed in the seventeenth year of his present Majesty, intituled an act,' &c. 'should be repealed, and other provisions substituted in lieu thereof;' May it therefore please, &c., and be it enacted by, &c., "That the said recited act shall be and the same is hereby repealed, save and except so far as regards any annuities or rent-charges, which have been granted before the passing of this act."

Sect. 2. "And be it further enacted, that within thirty days after the

execution of every deed, bond, instrument or other assurance, whereby any annuity or rent-charge shall, from and after the passing of this act, be granted for one or more life or lives, or for any term of years or greater estate determinable on one or more life or lives, a memorial of the date of every such deed, bond, instrument or other assurance, of the names of all parties and of all the witnesses thereto, and of the person or persons for whose life or lives such annuity or rent-charge shall be granted, and of the person or persons by whom the same is to be beneficially received, the pecuniary consideration or considerations for granting the same, and the annual sum or sums to be paid, shall be inrolled in the High Court of Chancery, in the form or to the effect following, with such alterations therein as the nature and circumstance of any particular case may reasonably require:—

Date of instrument.	Nature of instrument.	Names of parties.	Names of witnesses.	Name or names of person or persons by whom annuity or rent charge to be beneficially received.	Person or persons for whose life or lives the annuity or rent-charge is granted.	Consideration, and how paid.	Amount of annuity or rent-charge.
10Aug. 1813.	Indentures of lease and release.	A. B. of one part, C. D. of the other part.	E. F. of G. H. of	C. D.	A. B.	100 <i>l.</i> paid in money, 500 <i>l.</i> paid in notes of the governor and company of the Bank of England, or other notes or bills of exchange, as the case may be.	100 <i>l.</i> a-year.
Same date.	Bond in penalty of 1200 <i>l.</i>	A. B. to C. D.	E. F. G. H.	} For securing the same annuity or rent-charge.			
Same date.	Warrant of attorney to confess judgment on the same bond.	A. B. to I. K. and L. M. attornies of Court of King's Bench.	E. F. G. H.				

otherwise every such deed, bond, instrument or other assurance shall be null and void to all intents and purposes.”

Sect. 3. “ Provided always and be it further enacted, that if any such annuity shall be granted by, or to or for the benefit of any company exceeding in number ten persons, which company shall be formed for the purpose of granting or purchasing annuities, it shall be sufficient in any such memorial to describe such company by the usual firm or name of trade.”

Sect. 4. “ And be it further enacted, that in every deed, bond, instru-
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ment or other assurance, whereby any annuity or rent-charge shall from and after the passing of this act be granted, or attempted to be granted, for one or more life or lives, or for any term of years or greater estate determinable on one or more life or lives, where the person or persons to whom such annuity shall be granted or secured to be paid shall not be intitled thereto beneficially, the name or names of the person or persons who is or are intended to take the annuity beneficially shall be described in such or the like manner as is hereinbefore required in the inrolment, otherwise every such deed, instrument or other assurance shall be null and void."

Sect. 6. "And be it further enacted, that if any part of the consideration for the purchase of any such annuity or rent-charge shall be returned to the person advancing the same, or in case such consideration or any part of it shall be paid in notes, if any of the notes, with the privity and consent of the person advancing the same, shall not be paid when due, or shall be cancelled or destroyed without being first paid; or if such consideration is expressed to be paid in money, but the same or any part of it shall be paid in goods; or if the consideration or any part of it shall be retained on pretence of answering the future payments of the annuity or rent-charge, or any other pretence; in all and every the aforesaid cases it shall be lawful for the person by whom the annuity or rent-charge is made payable, or whose property is liable to be charged or affected thereby, to apply to the court in which any action shall be brought for payment of the annuity or rent-charge, or judgment entered, by motion to stay proceedings on the action or judgment, and if it shall appear to the court that such practices as aforesaid, or any of them, have been used, it shall and may be lawful for the court to order every deed, bond, instrument or other assurance, whereby the annuity or rent-charge is secured, to be cancelled, and the judgment, if any has been entered, to be vacated."

[Sect. 8 declares all contracts for the purchase of any annuity or rent-charge with any person under the age of twenty-one years, to be utterly void, notwithstanding any attempt to confirm the same after such person attains twenty-one; and makes it a misdemeanor to prevail on an infant to grant or bind himself, when of age, to grant an annuity or rent-charge, or to forego the plea of infancy, or to ratify the annuity when of age.]

Sect. 10. "And be it further enacted, that this act shall not extend to Scotland or Ireland, nor to any annuity or rent-charge given by will or marriage settlement, or for the advancement of a child, nor to any annuity or rent-charge secured upon freehold or *copyhold* or *customary* lands in Great Britain or Ireland, or in any of his Majesty's possessions beyond the seas, of equal or greater annual value than the said annuity, over and above any other annuity, and the interest of any principal sum charged or secured thereon, of which the grantee had notice at the time of the grant, whereof the grantor is seized in fee simple or fee tail in possession, or the fee simple whereof in possession the grantor is enabled to charge at the time of the grant, or secured by the actual transfer of stock in any of the public funds, the dividends whereof are of equal or greater annual value than the said annuity; nor to any *voluntary* annuity or rent-charge granted

without regard to pecuniary consideration *or money's worth*, nor to any annuity or rent-charge granted by any body corporate, or under any authority or trust created by act of parliament."

3 GEO. IV. c. 92.

"An act to explain an act of the fifty-third year of the reign of his late Majesty, respecting the enrolment of memorials of grants of annuities."

"And whereas the form or effect to which such enactment refers is expressed in several columns, at the head of one of which are the words 'names of witnesses,' and underneath, as applicable to indentures of lease and release, the letters and words '*E. F.* of,' '*G. H.* of'; and as applicable to a bond and warrant of attorney to confess judgment, the letters '*E. F.*,' '*G. H.*' without the word 'of': And whereas the words of enactment referring to such form express only that a memorial of the names of all the witnesses to every such deed, bond, instrument or other assurance as therein mentioned should be enrolled as directed by the said act, without providing that any description of the witnesses should be given in such memorial, except as such form is thereby referred to, and such form does not provide that any description should be added to such names except by the addition of the word 'of' to the letters '*E. F.*' as aforesaid, as applicable to indentures of lease and release: And whereas in consequence of such indistinct enactment it may be doubtful whether it was the intention of the legislature to require any, or, if any, what description to be added to the names of witnesses in the memorial of any deed, instrument or assurance to be enrolled as aforesaid: And whereas a very great number of memorials of grants of annuities have since the passing of the said act been enrolled, in which the names of the witnesses to the deeds, instruments or assurances specified in such memorials have been inserted without the addition of the place of abode of such witnesses, and it has been inferred from the use of the word 'of' after such letters '*E. F.*' and after such letters '*G. H.*' as aforesaid, that it was necessary to describe each of such witnesses in such memorial as of some place, and in consequence thereof some grants of annuities made since the passing of the said act have been, in proceedings in summary applications to courts of justice, which cannot be reviewed in any superior court, deemed null and void on the ground that no description of the place of abode of the witnesses to some or one of the deeds, instruments or assurances by which such grants of annuities have been made, had been inserted in the memorials or memorial thereof enrolled as directed by the said act; And whereas doubts have been entertained whether the construction so put on the said act is the true construction thereof, more especially as the same is so far penal as it renders deeds, instruments and assurances, of which memorials have not been enrolled in pursuance of the said act, null and void, and the provisions in the said act are not so clear and explicit as the same ought to have been under such circumstances, and the parties claiming under grants of annuities may have

been thereby misled, and induced to conceive that it was not necessary under the provisions of the said act to insert in the memorial of any deed, instrument or assurance to be enrolled as aforesaid the place or places of abode of the witness or witnesses to such deed, instrument or assurance, or any more than the name or names of such witness or witnesses, there being no words in the said act expressly requiring any more to be so inserted, nor any words from which it could be inferred that any more was required to be so inserted, except the word 'of' after the letters '*E. F.*' and '*G. H.*' respectively, with reference to one species of assurance inserted in the form of memorial before mentioned; and it is expedient to remove all doubts touching the construction of the said act with respect to so much of the memorials required by the said act to be enrolled as relates to any description of the witness or witnesses to any deed, instrument or assurance: May it therefore please &c., and be it enacted and declared by &c., that by the said act of the fifty-third year of the reign of his said late Majesty, no further or other description of the subscribing witness or witnesses to any deed, bond, instrument or other assurance, whereby any annuity or rent-charge is or may be granted, is required in the memorial thereof besides the names of all such witnesses; and so the said act shall be deemed, construed and taken."

7 GEO. IV. c. 75.

"An act to explain an act of the fifty-third year of the reign of his late Majesty respecting the enrolment of memorials of grants of annuities."

"And whereas it frequently happens that the names of witnesses to grants of annuities or other assurances are unknown to the grantees thereof, or their solicitors or agents, otherwise than as they appear by the subscriptions of such witnesses to the attestations of the execution of such grants or assurances, and it might greatly endanger the validity of any such assurance if any name were inserted in the memorial thereof as the name of any such witness in any other manner than as the same appears signed by such witness as attesting the execution of such assurance; And whereas a very great number of memorials of grants of annuities have since the passing of the said act been enrolled, in which the surnames of witnesses to the deeds, instruments or assurances specified in such memorials have been inserted, together with such initial letters or abbreviation of the christian names of such witnesses as appear subscribed to the attestation by such witnesses of the execution of such deeds, instruments or assurances, without stating at full length the christian names of such witnesses; And whereas doubts have been entertained whether, according to the true construction of the said act, it is necessary to the validity of any such grant or other assurance, that the christian as well as surnames of all the witnesses to such deed, grant or other assurance, should be inserted in the memorial thereof in any other manner than as the same may appear subscribed to the attestation of such deed, grant or other assurance, by such witnesses respectively; and in order to remove such doubts, Be it enacted and de-

clared by &c., that by the said act of the fifty-third year of the reign of his said late Majesty, no further or other name or names of the subscribing witness or witnesses to any deed, bond, instrument or other assurance whereby any annuity or rent-charge is or may be granted, is or are required in the memorial thereof, besides the names of all such witnesses as they shall appear signed to their attestations respectively of the execution of such deed, bond, instrument or other assurance; and so the said act shall be deemed, construed and taken."

55 GEO. III. c. 192.

"An act to remove certain difficulties in the disposition of copyhold estates by will (i)."

"Whereas by the custom of certain manors, copyhold estates of such manors pass by the last will and testament of the copyhold tenants thereof, declaring the uses of surrenders made for that purpose: And whereas much inconvenience has arisen from the necessity of making such surrenders: For remedy whereof, may &c," "and be it enacted" by &c., "that in all cases where by the custom of any manor in England or Ireland any *copyhold tenant (j)* of such manor may by his or her last will and testament dispose of or appoint his or her copyhold tenements, the same having been surrendered to such uses as should be declared by such last will and testament, *every disposition (k)* or charge made or to be made by any such last will and testament by any person who shall die after the passing of this act, of any such copyhold tenements, or of any right, title or interest in or to the same, shall be as valid and effectual to all intents and purposes, although no surrender shall have been made to the use of the last will and testament of such person, as the same would have been if a surrender had been made to the use of such will."

Sect. 2. "Provided also and it is hereby further enacted, that no person entitled or claiming to be entitled to copyhold lands, tenements or hereditaments, in consequence of any testamentary disposition, shall be entitled to be admitted to the same by virtue of any thing in this act contained, except upon payment of all such stamp duties, fees and sums of money as would have been lawfully due and payable in respect of the surrendering of such copyhold lands, tenements or hereditaments to the use of such will, or in respect of the presenting, registering or enrolling such surrender, had the same lands, tenements and hereditaments been surrendered to the use of the will of the person so disposing of the same; all such stamp duties, fees or sums of money as aforesaid, to be paid in addition to the stamp duties,

(i) But note, this act was repealed by 1 Vict. c. 26, post; and by sect. 3 of that act, copyhold and customary estates may be devised without any previous surrender to will, although the testator, whether entitled as heir, devisee or otherwise, shall

not have been admitted thereto.

(j) An unadmitted customary heir was within the meaning of the act. Ante, pt. 1, p. 266; and see 1 Myl. & Keen, 456.

(k) Vide pt. 1, p. 247.

fees or sums of money due or payable on the admission of such person so entitled or claiming to be entitled to the same copyhold lands, tenements or hereditaments, and the stamp duties to be affixed to the copy of the admission."

Sect. 3. " Provided always and it is hereby enacted and declared, that nothing in this act contained shall be construed, deemed or taken, at law or in equity, to render invalid or ineffectual any devise or disposition of any copyhold lands, tenements or hereditaments, or of any right, title or interest in or to copyhold lands, tenements or hereditaments, which would be valid or effectual if this act had not been made ; or to render valid and effectual any devise or disposition of any copyhold lands, tenements or hereditaments, or of any right, title or interest in or to any copyhold lands, tenements or hereditaments, which would be invalid or ineffectual if a surrender had been made to the use of the last will and testament of the person attempting to dispose of the same by will ; any thing hereinbefore contained to the contrary notwithstanding."

1 VICT. c. 26.

" An act for the amendment of the laws with respect to wills."

" Be it enacted by &c., that the words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this act, except where the nature of the provision or the context of the act shall exclude such construction, be interpreted as follows, (that is to say,) the word ' will ' shall extend to a testament, and to a codicil, and to an appointment by will or by writing in the nature of a will in exercise of a power, and also to a disposition by will and testament or devise of the custody and tuition of any child, by virtue of an act passed in the twelfth year of the reign of King Charles the Second, intituled ' An Act for taking away the Court of Wards and Liveries, and Tenures *in capite* and by Knights Service and Purveyance, and for settling a Revenue upon his Majesty in lieu thereof,' or by virtue of an act passed in the parliament of Ireland in the fourteenth and fifteenth years of the reign of King Charles the Second, intituled ' An Act for taking away the Court of Wards and Liveries, and Tenures *in capite* and by Knights Service,' and to any other testamentary disposition ; and the words ' real estate ' shall extend to manors, advowsons, messuages, lands, tithes, rents and hereditaments, whether freehold, customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether corporeal, incorporeal or personal, and to any undivided share thereof, and to any estate, right or interest (other than a chattel interest) therein ; and the words ' personal estate ' shall extend to leasehold estates and other chattels real, and also to monies, shares of government and other funds, securities for money (not being real estates), debts, choses in action, rights, credits, goods, and all other property whatsoever which by law devolves upon the executor or administrator, and to any share or interest therein ; and every word importing the singular number only shall extend and be applied to several

persons or things as well as one person or thing; and every word importing the masculine gender only shall extend and be applied to a female as well as a male."

Sect. 2. "And be it further enacted, that an act passed in the thirty-second year of the reign of King Henry the Eighth, intituled 'The Act of Wills, Wards and Primer Seisins, whereby a Man may devise Two Parts of his land;' and also an act passed in the thirty-fourth and thirty-fifth years of the reign of the said King Henry the Eighth, intituled, 'The Bill concerning the Explanation of Wills;' and also an act passed in the parliament of Ireland, in the tenth year of the reign of King Charles the First, intituled 'An Act how Lands, Tenements &c., may be disposed by Will or otherwise, and concerning Wards and Primer Seisins;' and also so much of an act passed in the twenty-ninth year of the reign of King Charles the Second, intituled 'An Act for Prevention of Frauds and Perjuries,' and of an act passed in the parliament of Ireland in the seventh year of the reign of King William the Third, intituled 'An Act for Prevention of Frauds and Perjuries,' as relates to devises or bequests of lands or tenements, or to the revocation or alteration of any devise in writing of any lands, tenements or hereditaments, or any clause thereof, or to the devise of any estate *pur autre vie*, or to any such estate being assets, or to nuncupative wills, or to the repeal, altering or changing of any will in writing concerning any goods or chattels or personal estate, or any clause, devise or bequest therein; and also so much of an act passed in the fourth and fifth years of the reign of Queen Anne, intituled 'An Act for the Amendment of the Law and the better Advancement of Justice,' and of an act passed in the parliament of Ireland in the sixth year of the reign of Queen Anne, intituled 'An Act for the Amendment of the Law and the better Advancement of Justice,' as relates to witnesses to nuncupative wills; and also so much of an act passed in the fourteenth year of the reign of King George the Second, intituled 'An Act to amend the Law concerning Common Recoveries, and to explain and amend an Act made in the Twenty-ninth year of the Reign of King Charles the Second, intituled 'An Act for Prevention of Frauds and Perjuries,' as relates to estates *pur autre vie*; and also an act passed in the twenty-fifth year of the reign of King George the Second, intituled 'An Act for avoiding and putting an end to certain Doubts and Questions relating to the Attestation of Wills and Codicils concerning Real Estates in that Part of Great Britain called England, and in his Majesty's Colonies and Plantations in America,' except so far as relates to his Majesty's colonies and plantations in America; and also an act passed in the parliament of Ireland in the same twenty-fifth year of the reign of King George the Second, intituled 'An Act for the avoiding and putting an end to certain Doubts and Questions relating to the Attestations of Wills and Codicils concerning Real Estates;' and also an act passed in the fifty-fifth of the reign of King George the Third, intituled 'An Act to remove certain Difficulties in the Disposition of Copyhold Estates by Will,' shall be and the same are hereby repealed, except

so far as the same acts or any of them respectively relate to any wills or estates *pur autre vie* to which this act does not extend."

Sect. 3. "And be it further enacted, that it shall be lawful for every person to devise, bequeath or dispose of by his will executed in manner hereinafter required, all real estate and all personal estate which he shall be entitled to, either at law or in equity, at the time of his death, and which, if not so devised, bequeathed or disposed of, would devolve upon the heir at law, or customary heir of him, or if he became entitled by descent, of his ancestor, or upon his executor or administrator; and that the power hereby given shall extend to all real estate of the nature of customary freehold or tenant right, or customary or copyhold, notwithstanding that the testator may not have surrendered the same to the use of his will (*m*), or notwithstanding that, being entitled as heir, devisee, or otherwise to be admitted thereto, he shall not have been admitted thereto, or notwithstanding that the same, in consequence of the want of a custom to devise or surrender to the use of a will or otherwise, could not at law have been disposed of by will if this act had not been made, or notwithstanding that the same, in consequence of there being a custom that a will or a surrender to the use of a will should continue in force for a limited time only, or any other special custom, could not have been disposed of by will according to the power contained in this act, if this act had not been made; and also to estates *pur autre vie*, whether there shall or shall not be any special occupant thereof, and whether the same shall be freehold, customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether the same shall be a corporeal or an incorporeal hereditament (*n*); and also to all contingent, executory or other future interests in any real or personal estate, whether the testator may or may not be ascertained as the person or one of the persons in whom the same respectively may become vested, and whether he may be entitled thereto under the instrument by which the same respectively were created, or under any disposition thereof by deed or will; and also to all rights of entry for conditions broken and other rights of entry; and also to such of the same estates, interests and rights respectively, and other real and personal estate as the testator may be entitled to at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will."

Sect. 4. "Provided always and be it further enacted, that where any real estate of the nature of customary freehold or tenant right, or customary or copyhold, might, by the custom of the manor of which the same is holden, have been surrendered to the use of a will, and the testator shall not have surrendered the same to the use of his will, no person entitled or claiming to be entitled thereto by virtue of such will shall be entitled to be admitted, except upon payment of all such *stamp duties* (*o*), fees and sums of money as would have been lawfully due and payable in respect of the

(*m*) Ante, pt. 1, pp. 211, 247.

(*o*) Ante, pt. 1, p. 211.

(*n*) Ante, pt. 1, p. 51.

surrendering of such real estate to the use of the will, or in respect of presenting, registering or enrolling such surrender, if the same real estate had been surrendered to the use of the will of such testator: Provided also, that where the testator was entitled to have been admitted to such real estate, and might, if he had been admitted thereto, have surrendered the same to the use of his will, and shall not have been admitted thereto, no person entitled or claiming to be entitled to such real estate in consequence of such will, shall be entitled to be admitted to the same real estate by virtue thereof, except on payment of all such stamp duties, fees, *fine* and sums of money as would have been lawfully due and payable in respect of the admittance of such testator to such real estate, and also of all such stamp duties, fees and sums of money as would have been lawfully due and payable in respect of surrendering such real estate to the use of the will, or of presenting, registering or enrolling such surrender, had the testator been duly admitted to such real estate, and afterwards surrendered the same to the use of his will; all which stamp duties, fees, fine or sums of money due as aforesaid, shall be paid in addition to the stamp duties, fees, fine or sums of money due or payable on the admittance of such person so entitled or claiming to be entitled to the same real estate as aforesaid."

Sect. 5. "And be it further enacted, that when any real estate of the nature of customary freehold or tenant right, or customary or copyhold, shall be disposed of by will, the lord of the manor or reputed manor of which such real estate is holden, or his steward, or the deputy of such steward, shall cause the will by which such disposition shall be made, or so much thereof as shall contain the disposition of such real estate, to be entered on the court rolls of such manor or reputed manor; and when any trusts are declared by the will of such real estate, it shall not be necessary to enter the declaration of such trusts, but it shall be sufficient to state in the entry on the court rolls that such real estate is subject to the trusts declared by such will; and when any such real estate could not have been disposed of by will if this act had not been made, the same fine, heriot, dues, duties and services shall be paid and rendered by the devisee, as would have been due from the customary heir in case of the descent of the same real estate; and the lord shall, as against the devisee of such estate, have the same remedy for recovering and enforcing such fine, heriot, dues, duties and services as he is now entitled to for recovering and enforcing the same from or against the customary heir in case of a descent."

Sect. 6. "And be it further enacted, that if no disposition by will shall be made of any estate *pur autre vie* of a freehold nature, the same shall be chargeable in the hands of the heir, if it shall come to him by reason of special occupancy, as assets by descent, as in the case of freehold land in fee simple; and in case there shall be no special occupant of any estate *pur autre vie*, whether freehold or customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether a corporeal or incorporeal hereditament, it shall go to the executor or administrator of the party that had the estate thereof by virtue of the grant; and if the same shall come to the executor or administrator, either by reason of a special

occupancy, or by virtue of this act, it shall be assets in his hands, and shall go and be applied and distributed in the same manner as the personal estate of the testator or intestate (*o*)."

Sect. 7. "And be it further enacted, that no will made by any person under the age of twenty-one years shall be valid."

Sect. 8. "Provided also and be it further enacted, that no will made by any married woman shall be valid, except such a will as might have been made by a married woman before the passing of this act."

Sect. 9. "And be it further enacted, that no will shall be valid unless it shall be in writing and executed in manner hereinafter mentioned, that is to say, it shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction; and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary (*p*)."

Sect. 10. "And be it further enacted, that no appointment made by will, in exercise of any power, shall be valid, unless the same be executed in manner hereinbefore required; and every will executed in manner hereinbefore required shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity."

Sect. 11. "Provided always and be it further enacted, that any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the making of this act."

Sect. 12. "And be it further enacted, that this act shall not prejudice or affect any of the provisions contained in an act passed in the eleventh year of the reign of his majesty King George the Fourth and the first year of the reign of his late majesty King William the Fourth, intituled 'An Act to amend and consolidate the Laws relating to the Pay of the Royal Navy, respecting the wills of petty officers and seamen in the royal navy, and non-commissioned officers of marines, and marines, so far as relates to their wages, pay, prize money, bounty money and allowances, or other monies payable in respect of services in her majesty's navy.'"

Sect. 13. "And be it further enacted, that every will executed in manner hereinbefore required shall be valid without any other publication thereof."

Sect. 14. "And be it further enacted, that if any person who shall attest the execution of a will shall at the time of the execution thereof, or at any time afterwards, be incompetent to be admitted a witness to prove the execution thereof, such will shall not on that account be invalid."

Sect. 15. "And be it further enacted, that if any person shall attest the

(*o*) Ante, pt. 1, pp. 51, 89, 300, 351. El. (N. S.) 117.

(*p*) Vide *Harrison v. Elvin*, 3 Ad. &

execution of any will to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift or appointment, of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts) shall be thereby given or made, such devise, legacy, estate, interest, gift or appointment, shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void, and such person so attesting shall be admitted as a witness to prove the execution of such will, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift or appointment mentioned in such will."

Sect. 16. "And be it further enacted, that in case by any will any real or personal estate shall be charged with any debt or debts, and any creditor, or the wife or husband of any creditor whose debt is so charged, shall attest the execution of such will, such creditor, notwithstanding such charge, shall be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof."

Sect. 17. "And be it further enacted, that no person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will, or a witness to prove the validity or invalidity thereof."

Sect. 18. "And be it further enacted, that every will made by a man or woman shall be revoked by his or her marriage, (except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not in default of such appointment pass to his or her heir, customary heir, executor or administrator, or the person entitled as his or her next of kin, under the statute of distributions) (q)."

Sect. 19. "And be it further enacted, that no will shall be revoked by any presumption of an intention, on the ground of an alteration in circumstances (q)."

Sect. 20. "And be it further enacted, that no will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same."

Sect. 21. "And be it further enacted, that no obliteration, interlineation or other alteration made in any will after the execution thereof shall be valid or have any effect, except so far as the words or effect of the will before such alteration shall not be apparent, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; but the will, with such alteration as part thereof, shall be deemed to be duly executed, if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will oppo-

(q) Ante, pt. 1, p. 273, 274.

site or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will."

Sect. 22. "And be it further enacted, that no will or codicil, or any part thereof which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same; and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown."

Sect. 23. "And be it further enacted, that no conveyance or other act made or done subsequently to the execution of a will, of or relating to any real or personal estate therein comprised, except an act by which such will shall be revoked as aforesaid, shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death (*s*)."

Sect. 24. "And be it further enacted, that every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will (*t*)."

Sect. 25. "And be it further enacted, that, unless a contrary intention shall appear by the will, such real estate or interest therein as shall be comprised or intended to be comprised in any devise in such will contained which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will."

Sect. 26. "And be it further enacted, that a devise of the land of the testator, or of the land of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a customary, copyhold or leasehold estate if the testator had no freehold estate which could be described by it, shall be construed to include the customary, copyhold and leasehold estates of the testator, or his customary, copyhold and leasehold estates, or any of them, to which such description shall extend, as the case may be, as well as freehold estates, unless a contrary intention shall appear by the will (*u*)."

Sect. 27. "And be it further enacted, that a general devise of the real estate of the testator, or of the real estate of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary inten-

(*s*) Ante, pt. 1, p. 269. Vide *Moor v. Raisbeck*, 12 Sim. 123; *Farrar v. Earl of Winterton*, 5 Beav. 1.

(*t*) Vide *Harris v. Davis*, 1 Coll. 416.

(*u*) Ante, pt. 1, p. 236 et seq.

tion shall appear by the will; and in like manner a bequest of the personal estate of the testator, or any bequest of personal property described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will (v)."

Sect. 28. "And be it further enacted, that where any real estate shall be devised to any person without any words of limitation, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by the will (x)."

Sect. 29. "And be it further enacted, that in any devise or bequest of real or personal estate, the words 'die without issue,' or 'die without leaving issue,' or 'have no issue,' or any other words which may import either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will, by reason of such person having a prior estate tail, or of a preceding gift, being, without any implication arising from such words, a limitation of an estate tail to such person or issue, or otherwise: provided that this act shall not extend to cases where such words as aforesaid import if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue (y)."

Sect. 30. "And be it further enacted, that where any real estate (other than or not being a presentation to a church) shall be devised to any trustee or executor, such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years, absolute or determinable, or an estate of freehold, shall thereby be given to him expressly or by implication."

Sect. 31. "And be it further enacted, that where any real estate shall be devised to a trustee, without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate, or in the surplus rents and profits thereof, shall not be given to any person for life, or such beneficial interest shall be given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee the fee simple, or other the whole legal estate which the testator had power to dispose of by will in such real estate, and not an estate determinable when the purposes of the trust shall be satisfied (z)."

(v) Ante, pt. 1, p. 251. Vide *Pidgley v. Pidgley*, 1 Coll. 255; *Harrington v. Harrington*, 13 Sim. 318.

(x) Ante, pt. 1, p. 247 et seq.

(y) Ante, pt. 1, p. 264, 265.

(z) Ante, pt. 1, p. 253. Vide *Doe v. Davies*, 1 Ad. & El. (N. S.) 430.

Sect. 32. "And be it further enacted, that where any person to whom any real estate shall be devised for an estate tail or an estate in quasi entail, shall die in the lifetime of the testator leaving issue who would be inheritable under such entail, and any such issue shall be living at the time of the death of the testator, such devise shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will."

Sect. 33. "And be it further enacted, that where any person, being a child or other issue of the testator to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person, shall die in the lifetime of the testator leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will (a)."

Sect. 34. "And be it further enacted, that this act shall not extend to any will made before the 1st day of January, 1838, and that every will re-executed or republished, or revived by any codicil, shall for the purposes of this act be deemed to have been made at the time at which the same shall be so re-executed, republished or revived; and that this act shall not extend to any estate *pur autre vie* of any person who shall die before the 1st day of January, 1838 (b)."

Sect. 35. "And be it further enacted, that this act shall not extend to Scotland."

Sect. 36. "And be it enacted, that this act may be amended, altered or repealed by any act or acts to be passed in this present session of parliament."

55 GEO. III. c. 147.

"An act for enabling spiritual persons to exchange the parsonage or glebe houses or glebe lands, belonging to their benefices, for others of greater value, or more conveniently situated for their residence and occupation; and for annexing such houses and lands, so taken in exchange, to such benefices as parsonage or glebe houses and glebe lands, and for purchasing and annexing lands to become glebe in certain cases; and for other purposes."

"Whereas in divers ecclesiastical benefices, perpetual curacies and parochial chapelries, the glebe lands, or some part or parts thereof, lie at a distance from and are inconvenient to be occupied with the parsonage or glebe houses; and the parsonage or glebe houses of divers benefices, perpetual curacies and parochial chapelries are mean and inconvenient; and it would often tend much to the comfort and accommodation, and thereby also to

(a) Vide *Griffiths v. Gale*, 12 Sim. 327, 354; *Johnson v. Johnson*, 3 Hare, 157. (b) *Andrews v. Turner*, 3 Ad. & El. (N. S.) 177.

promote the residence of the incumbents of such benefices, perpetual curacies and parochial chapelries, if the glebe lands and parsonage or glebe houses thereof could be by law exchanged for other lands of greater value, or more conveniently situated, and for other and more convenient houses: And whereas there are also divers lands and tenements which have been accustomed to be granted or demised by the incumbent for the time being of certain ecclesiastical benefices, perpetual curacies or parochial chapelries, for one, two or three lives, or for a term or terms of years absolutely or determinable on a life or lives, *as being holden by copy of court roll or otherwise, under some manor or lordship belonging to such benefices, perpetual curacies, or parochial chapelries*, and it would therefore be advantageous to the said benefices if the same lands and tenements, or some of them, or some part thereof, were annexed as glebe to the living or benefice to which they belong: may it therefore please," &c., "that from and after the passing of this act, it shall be lawful for the parson, vicar, or other incumbent for the time being of any ecclesiastical benefice, perpetual curacy or parochial chapelry, by deed indented, and to be registered in manner hereinafter mentioned, and with the consent of the patron of such benefice, perpetual curacy or parochial chapelry, and of the bishop of the diocese wherein the same is locally situate, (to be signified as hereinafter is mentioned,) to grant and convey to any person or persons, and to his, her or their heirs and assigns, or otherwise as he or they shall direct or appoint, or to any corporation, sole or aggregate, and his or their successors, the parsonage or glebe house, and the outbuildings, yards, gardens and appurtenances thereof, and the glebe lands, and any pastures, feedings or rights of common or way appendant, appurtenant or in gross, or any or either of such house, outbuildings, yards, gardens and glebe lands, pastures, feedings, or rights of common or way, or any part or parts thereof, belonging to any such benefice, perpetual curacy or parochial chapelry, in lieu of and in exchange for any house, outbuildings, yards, gardens and appurtenances, and any lands, or any or either of them, whether lying within the local limits of such benefice, perpetual curacy or parochial chapelry or not, but so as that the same be situate conveniently for actual residence or occupation by the incumbent thereof, the same also being of greater value, or more conveniently situated than the premises so to be given in exchange, and being of freehold tenure, *or being copyhold of inheritance, or for life or lives, holden of any manor belonging to the same benefice*, and also for the parson, vicar or incumbent for the time being of the same benefice, perpetual curacy or parochial chapelry, by the same or a like deed, and with the like consent, and testified as aforesaid, to accept and take in exchange to him and his successors for ever, from any person or persons, or corporation sole or aggregate, any other house, outbuildings, yards, gardens, easements and appurtenances, and any other lands, or any or either of such house, outbuildings, yards, gardens, lands, easements and appurtenances, the same respectively being of freehold tenure, *or being copyhold of inheritance, or for life or lives, holden of any manor belonging to the same benefice*, and being of greater value or more conveniently situated, in lieu of and in exchange for such parsonage or glebe house, outbuildings, yards,

gardens, glebe lands and appurtenances, and such pastures, feedings and rights of common or way, or any or either of them, so to be granted and conveyed, and which said house, outbuildings, yards, gardens, lands and appurtenances so to be accepted and taken in exchange by any parson, vicar or other incumbent, shall for ever, from and after such grant and conveyance thereof, be the parsonage and glebe house, and glebe lands and premises of the said benefice, perpetual curacy or parochial chapelry, to all intents and purposes whatsoever, and shall become annexed to the said benefice, perpetual curacy or parochial chapelry, to all intents and purposes whatsoever, and be holden and enjoyed by such incumbent and his successors accordingly, without any licence or writ of *ad quod damnum*; and that *the whole, or any part or parts of the said house, outbuildings, lands and premises so to be annexed, which before such annexation were of copyhold tenure, shall for ever, from and after such annexation, become and be of freehold tenure, the statute of mortmain, or any other statute or law to the contrary notwithstanding*: Provided always, that nothing in this act contained shall extend or be construed to authorize the granting or conveying in exchange by any parson, vicar or other incumbent, either at one and the same time, and by one and the same incumbent, or at different times, and by several incumbents, and in several portions, any greater quantity in the whole than thirty statute acres of the glebe lands of any benefice, perpetual curacy or parochial chapelry: Provided also, that in all cases when such exchange shall be made by any owner or owners having any less estate or interest than in fee simple of or in the messuage, buildings, lands and premises so to be by him, her or them granted or conveyed in exchange, or being any corporation aggregate or sole, or person or persons under any legal disability, the parsonage house, outbuildings and glebe lands respectively, to be so taken in exchange as aforesaid, shall at the time of making such exchange be of equal value with, or not of less value than the said messuage, buildings, land and premises respectively so to be granted and conveyed in exchange to such parson, vicar or other incumbent."

Sect. 4. " And be it further enacted, that from and after the passing of this act, it shall and may be lawful to and for the parson, vicar or other incumbent of any ecclesiastical benefice, perpetual curacy or parochial chapelry, of or to which benefice, perpetual curacy or parochial chapelry any manor or lordship is parcel or appurtenant, and as parcel of or belonging to which manor or lordship any lands or tenements are or have been usually granted or demised, or grantable or demisable by *copy of court roll*, or otherwise, for any life or lives, or for any term or number of years absolutely, or determinable on any life or lives, by deed indented, (and to be registered as hereinafter mentioned,) with the consent of the patron and bishop, (to be testified as hereinafter mentioned,) to annex to the said benefice, perpetual curacy or parochial chapelry, as and for glebe land, or parsonage or glebe house or houses and buildings thereof, all or any part or parts of such lands or tenements, whether lying within the local limits of such benefice, perpetual curacy, or parochial chapelry, or not; and that from and after such annexation, the said lands and tenements.

so annexed shall cease to be thereafter grantable or demisable by any incumbent of the said benefice, perpetual curacy or parochial chapelry, (otherwise than as glebe lands are or shall be by law grantable or demisable,) but shall from thenceforth be and become, and be deemed and taken to be the glebe lands and parsonage or glebe house or houses of and annexed to such benefice, perpetual curacy or parochial chapelry, for ever, to all intents and purposes whatsoever, without any license or writ of *ad quod damnum*, the statute of mortmain, or any other statute or law to the contrary notwithstanding: Provided always, that no such annexation shall in any wise annul, determine or affect any grant or demise then previously made and actually existing of the said lands and tenements so to be annexed as last aforesaid."

Sect. 6. " And whereas an act was passed in the seventeenth year of the reign of his present Majesty, intituled ' An Act to promote the Residence of the parochial Clergy, by making Provision for the more speedy and effectual building, rebuilding, repairing or purchasing Houses, and other necessary Buildings and Tenements for the Use of their Benefices: ' And whereas one other act was passed in the twenty-first year of the reign of his present Majesty, intituled ' An Act to explain and amend an Act made in the seventeenth year of the reign of his present Majesty, intituled An Act to promote the Residence of the parochial Clergy, by making Provision for the more speedy and effectual building, rebuilding, repairing or purchasing Houses, and other necessary Buildings and Tenements, for the Use of their Benefices: ' And whereas there are many ecclesiastical benefices, perpetual curacies and parochial chapelries, to which no glebe land, or only a small portion of glebe land is belonging, and it is therefore expedient to enable the making provision by purchase, for the annexation of glebe land to such benefices, perpetual curacies, and parochial chapelries: Be it therefore further enacted, that from and after the passing of this act, it shall be lawful for the parson, vicar, or other incumbent for the time being, of any ecclesiastical benefice, perpetual curacy or parochial chapelry, the existing glebe whereof shall not exceed five statute acres, with the consent of the patron and bishop, to be signified as hereinafter mentioned, to purchase any lands not exceeding in the whole twenty statute acres, with the necessary outbuildings thereon, whether being within the local limits of the said benefice, perpetual curacy or parochial chapelry, or not, but so as that the same be situate conveniently for building a parsonage or a glebe house, and outbuildings, and for gardens and glebe thereof, or for any of the said purposes, and for actual residence and occupation by the incumbent thereof, such land being of freehold tenure, *or being copyhold of inheritance, or for life or lives, holden of any manor or lordship belonging to the same benefice, perpetual curacy or parochial chapelry*; and which lands so purchased shall for ever, from and after the grant and conveyance thereof, be and become annexed to any glebe of such benefice, perpetual curacy or parochial chapelry, to all intents and purposes whatsoever, and be holden and enjoyed by such incumbent, and his successors accordingly, without any

license or writ of *ad quod damnum*; and *the whole or any part or parts of the said lands, which before such annexation were or was of copyhold tenure, shall for ever, from and after such annexation, become and be of freehold tenure*, the statute of mortmain or any other statute or law to the contrary notwithstanding.

[Sect. 7 authorizes such parson, vicar or other incumbent, with the consent of the patron and bishop, to borrow, (beyond the monies authorized to be borrowed by the said act of the 17 Geo. 3,) such sum as should be certified as therein mentioned to be the value of the said lands at the time of the purchase thereof, not exceeding two years' clear income and produce of such benefice &c., after deducting all taxes and other outgoings, (except the salary to the assistant curate, if any;) and to mortgage the tithes and other profits of such benefice &c., in the manner therein prescribed, for securing the repayment of the money so to be borrowed, with interest.]

[Sect. 12 empowers owners, whether corporations sole or aggregate, tenants in fee-simple, fee tail or for life &c., to convey in lieu and in exchange for any parsonage house &c., or to sell and convey to such parson &c., any lands not exceeding twenty statute acres, with the necessary out-buildings thereon, for such sum as should be certified as thereafter mentioned to be the value thereof, and directs the payment into the bank of the purchase monies for estates sold by any corporation, infants or other incapacitated persons.]

[Sect. 13 restrains corporations, tenants in tail &c., from selling or conveying (except by way of exchange) any lands or grounds exceeding five statute acres.]

[Sects. 14, 15, and 16 require a certain notice to be given of the intention to make such exchanges or purchases; and plans and valuations to be made of the lands &c., purchased, or agreed to be given and taken in exchange, to enable the bishop to judge of the expediency of such sales or exchanges; and also that a commission of inquiry be issued by the bishop, on receiving such plans, to not less than six persons, three to be beneficed clergymen, resident in the neighbourhood of the lands &c., exchanged or purchased, and one a barrister of at least three years' standing, to be named by the senior judge in the last preceding commission of *Nisi Prius* for the particular county &c.]

56 GEO. III. c. 52.

“An act to amend and render more effectual an act passed in the last session of parliament for enabling spiritual persons to exchange their parsonage houses or glebe lands, and for other purposes therein mentioned.”

“Whereas an act was passed in the last session of parliament, intituled ‘An Act’ &c., [*sets forth the title of the last mentioned act:*] And whereas it is expedient to authorize the incumbents of benefices, perpetual curacies and parochial chapelries to apply the monies arising from the sale of any timber cut from the glebe or other lands of their respective benefices, per-

petual curacies or parochial chapelries, towards the purposes of the said recited act: May it therefore please your Majesty that it may be enacted, and be it enacted" &c., "that it shall and may be lawful for the incumbent of any benefice, perpetual curacy or parochial chapelry, with the consent of the patron of such benefice, perpetual curacy or parochial chapelry, and of the bishop of the diocese wherein the same is locally situate, or of the archbishop or bishop to whom the peculiars, wherein such benefice, perpetual curacy or parochial chapelry is situate, shall belong, (such consent to be signified in manner as in the said recited act is mentioned,) to pay and apply the monies to arise by sale of any timber cut and sold from the glebe lands of such benefice, perpetual curacy or parochial chapelry, or from any other land, *whether copyhold holden under any manor of such benefice, perpetual curacy or parochial chapelry, or otherwise*, the timber whereof belongs to such benefice, perpetual curacy or parochial chapelry, either for equality of exchange, or towards and in part of equality of exchange, or for the price or purchase money, or towards and in part of the price or purchase-money of any house, outbuildings, yards, gardens and appurtenances, or any lands, or any or either of them, by the said recited act authorized to be taken in exchange or to be purchased, and from and after such exchange or purchase to be annexed to, and to be and become the parsonage and glebe house and glebe lands and premises of such benefice, perpetual curacy or parochial chapelry, as in the said recited act is mentioned."

Sect. 2. "And whereas it is by the said recited act enacted, that the bishop shall, in cases of exchange and purchase under the said act, issue a commission of enquiry for the purposes therein mentioned, to be directed to such persons as are therein described, and of whom one shall be a barrister of three years' standing at the least, to be named by the senior judge of *Nisi Prius* for the county in which the benefice, perpetual curacy or parochial chapelry, whereto it shall be proposed to annex any buildings or land by exchange or purchase under the said act, shall be situate; but inasmuch as the nomination of such barrister by a judge of *Nisi Prius* is not applicable to the county palatine of Chester, nor to the principality of Wales: Be it therefore enacted, that where any exchange or purchase shall be made or be proposed to be made under the authority of the said act in any benefice, perpetual curacy or parochial chapelry, situate within the said county palatine of Chester, or within the said principality of Wales, such barrister shall be named by the chief justice for the time being of the said county palatine of Chester, or by the justice, or, in case of his absence, the other justice of the great sessions for those counties within the said principality of Wales, within which said county palatine or respective counties of the said principality of Wales, the said benefice, perpetual curacy or parochial chapelry shall be situate."

6 GEO. IV. c. 8.

“An act to amend and render more effectual an act passed in the fifty-fifth year of the reign of his late Majesty, for enabling spiritual persons to exchange their parsonage houses or glebe lands, and for other purposes therein mentioned (a).”

“Whereas an act was passed in the fifty-fifth year of the reign of his late majesty King George the Third, intituled ‘An Act,’ &c., [ante, p. 974:] And whereas it is by the said recited act enacted, That the bishop shall, in cases of exchange and purchase under the said act, issue a commission of enquiry for the purposes therein mentioned, to be directed to such persons as are therein described, and of whom one shall be a barrister of three years’ standing at the least, to be named by the senior judge of *Nisi Prius* for the county in which the benefice, perpetual curacy or parochial chapelry, whereto it shall be proposed to annex any buildings or land by exchange or purchase under the said act, shall be situate; but inasmuch as the nomination of such barrister by a judge of *Nisi Prius* is not applicable to the counties palatine of Lancaster and Durham:” Be it therefore enacted &c., “That where any exchange or purchase shall be made, or proposed to be made, under the authority of the said act, in any benefice, perpetual curacy or parochial chapelry, situate within the said counties palatine of Lancaster or Durham, such barrister shall be named by the chief justice or senior judge for the time being of the Court of Common Pleas for the said counties palatine respectively.”

Sect. 2. “And whereas it is expedient that the incumbents of benefices, perpetual curacies and parochial chapelries, should be enabled to exchange the glebe lands belonging to their benefices, perpetual curacies or parochial chapelries, to a greater amount than thirty statute acres;” Be it therefore enacted, “That from and after the passing of this act, the power to exchange glebe lands for others of equal value, which is given to parsons, vicars and other incumbents by the above recited act passed in the fifty-fifth year of the reign of his late majesty King George the Third, be extended to any number of statute acres, but subject to all the provisions, conditions and restrictions contained in the above recited act, and also to those in another act passed in the fifty-sixth year of his late Majesty’s reign, intituled ‘An Act,’ &c.” [Ante, p. 283.]

Sect. 3. “And whereas by the said recited act of the fifty-fifth year of the reign of his late majesty King George the Third, the powers of exchange thereby given are limited to such houses, outbuildings, yards, gardens and

(a) And see 7 Geo. 4, c. 66, “to render more effectual the several acts now in force to promote the residence of the parochial clergy, by making provision for purchasing houses and other necessary buildings for the use of their benefices,” by which, (after reciting, among other

acts of parliament, the above acts of 55 Geo. 3, c. 147, 56 Geo. 3, c. 52, and 6 Geo. 4, c. 8,) corporations and persons under disability or incapacity are authorized to sell messuages, lands &c., for the purposes of the therein recited acts.

appurtenances and lands, to be accepted and taken in exchange by the spiritual persons therein named, as are of freehold tenure, or *copyhold* of inheritance, or for life or lives, holden of any manor belonging to the benefice in respect of which any such exchange is intended to be made: And whereas it may happen that such exchanges may sometimes be beneficially made where the lands or tenements so to be accepted and taken in exchange are *copyhold* of inheritance holden of some manor not belonging to the benefice in respect of which such exchange is intended, and without injury to the lord or lords, lady or ladies of such manor:” Be it therefore enacted, “That from and after the passing of this act, it shall and may be lawful for the parson, vicar or other incumbent for the time being of any ecclesiastical benefice, perpetual curacy, or parochial chapelry, to grant and convey, in the manner, and by and under the several powers, provisions, conditions and restrictions contained in the said act, and in the said act of the fifty-sixth year of the reign of his said majesty, and in this act, to any such person or persons, or corporation, as in the said first mentioned act are described, any such lands or tenements as are described in the same act, belonging to his benefice, in lieu of and in exchange for any lands or tenements of the description mentioned in the said first mentioned act, as those which are thereby authorized to be accepted and taken in exchange by any such parson, vicar or other incumbent, although such last mentioned lands or tenements may be copyhold of inheritance holden of a manor not belonging to such ecclesiastical benefice, perpetual curacy or parochial chapelry: Provided always, that no such exchange be made without the consent of the lord of the manor of which the lands to be taken in exchange are holden: Provided always, that from and immediately after such conveyance, the lands or tenements accepted and taken in exchange by any such parson, vicar or other incumbent, shall become and be of freehold tenure, and the lands or tenements by him granted and conveyed, and which before such conveyance belonged to his benefice, perpetual curacy or parochial chapelry, shall become copyhold of the same manor, and subject to the same rents, fines, services, customs and manorial rights and properties to all intents and purposes, as the lands or tenements so to be accepted and taken in exchange were subject to before the making of such exchange: Provided always, that from and after the passing of this act, three calendar months’ notice shall be sufficient for the purpose of any exchange or purchase, instead of six calendar months, as by the said act of the fifty-fifth year of the reign of his said late Majesty is required (b).

2 & 3 VICT. c. 18.

“An act to enable archbishops and bishops to raise money on mortgage of their sees for the purpose of building and otherwise providing fit houses for their residence.”

[Sect. 1 empowers an archbishop or bishop to raise money on mortgage of the possessions of his see, for rebuilding or improving the palace or man-

(b) Ante, p. 978.

sion for his occupation, or for purchasing any *freehold* mansion house, &c., or for the purchase of *freehold* land for a site.]

[Sect. 16 authorizes any archbishop, with the consent of the other archbishop and the lord high treasurer or first lord commissioner of the treasury, and any bishop, with the consent of the archbishop of the province and the lord high treasurer or first lord commissioner of the treasury, signified in writing and by their being parties to the purchase deed, to contract for the purchase of any *freehold* messuage or mansion house, offices or outbuildings, or for the purchase of the fee of any *copyhold* messuage or mansion house, offices or outbuildings, for the residence or occupation of himself and his successors, either with or without land convenient to be held therewith, or of *freehold* or *copyhold* land (either with or without buildings thereon) as a site for a palace or mansion house, offices or outbuildings, to be conveyed unto and to the use of such archbishop or bishop and his successors, and be thereafter held and enjoyed by him and them respectively, and be and continue annexed to the said see as part of the possessions thereof.]

[Sect. 17 enables all persons under legal disability to contract for, sell and convey such messuages, buildings, lands and hereditaments, *and if copyhold to enfranchise the same.*]

[Vide 1 & 2 Geo. IV. c. 92, intituled "An Act to authorize the exchange of lands, tenements or hereditaments, subject to trusts for charitable purposes, for other lands, tenements or hereditaments."]

1 & 2 GEO. IV. c. 93.

"An act for vesting all estates and property occupied by or for the naval service of this kingdom in the principal officers of his majesty's navy, and for granting certain powers to the said principal officers and commissioners."

"Whereas divers manors, messuages, lands, tenements and hereditaments have been at various times purchased for the use of the several departments of or belonging to the naval service of this kingdom, and conveyed to several different persons in trust for his majesty and his royal predecessors, and his and their heirs and successors, and the same have been placed under the charge of the said several departments respectively: And whereas it may be expedient that such parts of the said manors, messuages, lands, tenements and hereditaments as may not be wanted for the use of the said service should from time to time be sold and disposed of: And whereas for effectuating such sales it is necessary that all and every the said manors, messuages, lands, tenements and hereditaments so already purchased, or used and occupied by or for the said service, and all other messuages, lands, tenements and hereditaments that may be hereafter purchased, or in any manner used and occupied by or for the said service, should be vested in the principal officers and commissioners of his majesty's navy for the time being: Be it therefore enacted," &c., "that immediately from and after the passing of this act, all manors, messuages, lands, tene-

ments and hereditaments which have been heretofore purchased or taken by or in the name of any person or persons, in trust for his majesty or his royal predecessors, and his or their heirs and successors, for the use of all or any of the several departments of or belonging to the naval service of this kingdom, by whatever mode of conveyance the same shall have been so purchased or taken, either in fee or for any life or lives, or any term or terms of years, or any other or lesser interest, and all erections and buildings which now are or which shall or may be hereafter erected and built thereon, together with the rights, members, easements and appurtenances to the same respectively belonging, (*other than and except such messuages, lands, tenements and hereditaments as may be of copyhold tenure,*) shall be and become and remain and continue vested in the principal officers and commissioners of his majesty's navy for the time being, and their successors in the said office, according to the respective nature and quality of the said manors, messuages, lands, tenements and hereditaments, and the several estates and interests of and in the same hereditaments respectively, in trust for his majesty, his heirs and successors, for the service of the said several departments of the said naval service, or for such other public service or services as his said majesty, his heirs or successors, shall from time to time by any order in council be pleased to direct."

Sect. 4. "And be it further enacted, that it shall and may be lawful for the said principal officers and commissioners of his majesty's navy for the time being, or any three or more of them, by and under the authority of the said lord high admiral or commissioners for executing the said office of lord high admiral for the time being, or any three or more of them, to sell, exchange or in any manner dispose of, or let or demise, as well any of the freehold and leasehold manors, messuages, lands, tenements or hereditaments respectively, which shall be vested in them under and by virtue of this present act, with their respective appurtenances, as also any of the *copyhold* messuages, lands, tenements and hereditaments which shall have been surrendered to and vested in any person or persons, and his, her or their heirs and assigns, in trust for his said majesty, or any of his predecessors, his or their heirs and successors, for the use of the said several departments of the said naval service or any of them, either by public auction or private contract; and as to the said freehold and leasehold manors, messuages, lands, tenements and hereditaments, that it shall and may be lawful to and for the said principal officers and commissioners, or any three or more of them, and as to the said *copyhold* messuages, lands, tenements and hereditaments, that it shall and may be lawful to and for the said person or persons in whom the same shall be so vested as aforesaid, in due form of law to convey, surrender, assign or make over, or to grant or demise the same respectively, as the case may require, to any person or persons who shall be willing to purchase or take the same respectively; and also to do any other act, matter or thing in relation to any such manors, messuages, lands, tenements and hereditaments, which shall by the said lord high admiral, or the commissioners for executing the office of lord high admiral, or by the said principal officers and commissioners of his majesty's

navy, be deemed beneficial for the public service in relation thereto, or for the better management thereof, which might be done by any person or persons having a like interest in any such like manors, messuages, lands, tenements or hereditaments."

Sect. 5. "And be it further enacted, that the monies to arise and be produced by the sale or exchange of any of the said manors, messuages, lands, tenements or hereditaments which shall be sold or exchanged under the provisions of this present act, shall be paid by the respective purchaser or purchasers thereof, or the person or persons making such exchange, unto the treasurer of his majesty's navy for the time being, or to such other person or persons as the said principal officers and commissioners of his majesty's navy for the time being, or any three or more of them, shall direct or appoint to receive the same, for the use of his majesty, his heirs and successors; and that the receipt of the said principal officers and commissioners, or of any three or more of them, or of the said treasurer for such monies, (such receipt to be indorsed on every such conveyance, surrender or assignment as aforesaid,) shall effectually discharge the purchaser or purchasers, or person or persons by whom or on whose account the same shall be paid."

Sect. 6. "And be it further enacted, that immediately from and after the payment of such purchase money, and the execution of every such conveyance, *surrender* and assignment as aforesaid, the purchaser or purchasers therein named shall be deemed and adjudged to stand seized and possessed of the manors, messuages, lands, tenements and hereditaments which shall be so purchased by and conveyed, *surrendered*, assigned or made over to him, her or them respectively, freed and absolutely discharged of and from all and all manner of prior estates, leases, rights, titles, interests, charges, incumbrances and demands whatsoever, which can or may be had, made or set up in, to, out of or upon or in respect of the same manors, messuages, lands, tenements or hereditaments, by any person or persons whomsoever, on any account whatsoever, (save and except such estates, leases, rights, titles, interests, charges, incumbrances, claims and demands as in any such conveyance, surrender or assignment shall be excepted)."

Sect. 7. "Provided always and be it further enacted, that in case any person or persons shall have any just and legal or equitable right to any of the manors, messuages, lands, tenements and hereditaments which shall be so sold and conveyed as aforesaid, or to any part or parts thereof, or to any charge, incumbrance or demand affecting the same, and (not being under any of the disabilities hereinafter mentioned) shall *within five years* next after every such right or claim shall by law or equity accrue to or become vested in him, her or them respectively, or being *femes covert*, (except *femes covert* whose estates have been or may be sold under the authority of this or any other act of parliament for that purpose,) persons within the age of twenty-one years, in prison or out of this kingdom, or not of whole mind at the time of such sale and conveyance as aforesaid, shall, within five years next after they shall respectively come and be discovert, at their full age of twenty-one years, out of prison, within this land, or of whole

mind, make out and establish such right or claim to the satisfaction of the principal officers and commissioners of his majesty's navy for the time being, then and in such case the said principal officers and commissioners shall make or cause to be made a fair and reasonable compensation or satisfaction for every such right and claim so made out and established as aforesaid; but such compensation or satisfaction shall not in any case exceed the amount of the purchase money or purchase monies which shall have been paid to and received by the said principal officers and commissioners, or the said treasurer, for the manors, messuages, lands, tenements and hereditaments in respect whereof such right or claim shall be so made out as aforesaid, or a proportional part thereof, exclusive of the value of any buildings or improvements which shall have been erected or made thereon for the use of any of the departments of the said naval service."

Sect. 10. "And be it further enacted, that it shall be lawful for all bodies politic or corporate, ecclesiastical or civil, and all feoffees or trustees for charitable or other purposes, and for all tenants for life and tenants in tail, and for the husbands, guardians, trustees, committees, curators or attornies of such of the owners or proprietors of or persons interested in any manors, messuages, lands, tenements or hereditaments which have been or may be hereafter agreed to be taken or purchased for the use of the several departments of the said naval service, or any of them, as shall be *femes covert*, infants, lunatics, idiots, or persons beyond the seas, or otherwise incapable of acting for themselves, to contract and agree with the said principal officers and commissioners of his majesty's navy for the time being, either *for the absolute sale or exchange of any* such freehold or *copyhold* manors, messuages, lands, tenements or hereditaments, or *for the enfranchisement of any copyhold* messuages, lands or hereditaments, or sale of any reversion after any estate or estates for lives or years, or for the grant of any lease either for life or lives, or for any term of years certain herein, or for such period as the exigency of the public service shall require, and to convey, *surrender*, demise or grant the same accordingly; and all contracts, sales, conveyances, enfranchisements, surrenders, leases and agreements which shall be made in pursuance hereof, shall be valid and effectual in law to all intents and purposes whatsoever, and shall be a complete bar to all dower and claims of dower, estates tail and other estates, rights, titles, trusts and interests whatsoever."

6 GEO. IV. c. 16.

"An act to amend the laws relating to bankrupts."

The first section repeals the act of 5 Geo. IV. c. 98, and all prior statutes relating to bankrupts.—The second section explains what persons are and are not to be deemed traders within the meaning of the act.—The third section is explanatory of the deeds and matters by which traders shall be deemed to have committed an act of bankruptcy.—See also section 8.—And note, that by the fifth section, lying in prison for twenty-one days, or escaping out of prison, are declared to be acts of bankruptcy.

Sect. 4. "And be it enacted, that where any such trader shall, after this

act shall have come into effect, execute any conveyance or assignment, by deed, to a trustee or trustees, of all his estate and effects, for the benefit of all the creditors of such trader, the execution of such deed shall not be deemed an act of bankruptcy, unless a commission issue against such trader within six calendar months from the execution thereof by such trader: Provided that such deed shall be executed by every such trustee within fifteen days after the execution thereof by the said trader, and that the execution by such trader and by every such trustee be attested by an attorney or solicitor; and that notice be given within two months after the execution thereof by such trader, in case such trader reside in London or within forty miles thereof, in the London Gazette, and also in two London daily newspapers; and in case such trader does not reside within forty miles of London, then in the London Gazette, and also in one London daily newspaper, and one provincial newspaper published near to such trader's residence; and such notice shall contain the date and execution of such deed, and the name and place of abode respectively of every such trustee, and of such attorney or solicitor."

Sect. 6. "And be it enacted, that if any such trader shall file in the office of the Lord Chancellor's secretary of bankrupts a declaration in writing signed by such trader, and attested by an attorney or solicitor, that he is insolvent or unable to meet his engagements, the said secretary of bankrupts or his deputy shall sign a memorandum that such declaration hath been filed, which memorandum shall be authority for the printer of the London Gazette to insert an advertisement of such declaration therein; and every such declaration shall, after such advertisement inserted as aforesaid, be an act of bankruptcy committed by such trader at the time when such declaration was filed; but no commission shall issue thereupon, unless it be sued out within two calendar months next after the insertion of such advertisement, and unless such advertisement shall have been inserted in the London Gazette within eight days after such declaration was filed; and no docket shall be struck upon such act of bankruptcy before the expiration of four days next after insertion of such advertisement, in case such commission is to be executed in London, or before the expiration of eight days next after such insertion, in case such commission is to be executed in the country; and the Gazette containing such advertisement shall be evidence to be received of such declaration having been filed."

Sect. 64. "And be it enacted, that the commissioners shall, by deed indented and enrolled in any of his majesty's courts of record, convey to the said assignees, for the benefit of the creditors as aforesaid, all lands, tenements and hereditaments, *except copy or customaryhold*, in England, Scotland, Ireland, or in any part of the dominions, plantations or colonies belonging to his majesty, to which any bankrupt is entitled, and all interest to which such bankrupt is entitled in any of such lands, tenements or hereditaments, and of which he might according to the laws of the several countries, dominions, plantations or colonies have disposed, and all such lands, tenements and hereditaments as he shall purchase, or shall descend, be devised, revert to, or come to such bankrupt before he shall have obtained his certificate, and all deeds, papers and writings respecting the

same; and every such deed shall be valid against the bankrupt, and against all persons claiming under him: Provided, that where according to the laws of any such plantation or colony such deed would require registration, enrolment or recording, the same shall be so registered, enrolled or recorded, according to the laws of such plantation or colony; and no such deed shall invalidate the title of any purchaser for valuable consideration prior to such registration, enrolment or recording, without notice that the commission has issued."

Sect. 65. "And be it enacted, that the commissioners shall, by deed indented and enrolled as aforesaid, make sale for the benefit of the creditors as aforesaid of any lands, tenements and hereditaments, situate either in England or Ireland, whereof the bankrupt is seized of any estate tail in possession, reversion or remainder, and whereof no reversion or remainder is in the crown, the gift or provision of the crown; and every such deed shall be good against the said bankrupt and the issue of his body, and against all persons claiming under him after he became bankrupt, and against all persons whom the said bankrupt by fine, common recovery, or any other means, might cut off or debar from any remainder, reversion or other interest, in or out of any of the said lands, tenements and hereditaments (c)."

Sect. 66. "And be it enacted, that the Lord Chancellor may, upon petition, order any conveyance or assignment either of the real or personal estate of the bankrupt, made either to assignees appointed by the commissioners or chosen by the creditors, and any enrolment thereof, to be vacated, provided that no title of any purchaser under any conveyance prior to such order be thereby affected, and that no estate previously barred be thereby revived; and the Lord Chancellor may order the commissioners to execute a new assignment or assignments of the debts and effects unreceived, and not disposed of by the then assignee or assignees, to any other person or persons to be chosen by the creditors as aforesaid, or to execute a new conveyance of the real estate unsold or not conveyed to such person or persons, and in such manner as the Lord Chancellor shall direct; and if such new assignment shall be ordered, the debts and personal estate of the bankrupt shall be thereby vested in such new assignees, and it shall be lawful for them to sue for the same, and to discharge any action or suit, or to give any acquittance for such debts, as effectually as the former assignees might have done; and the commissioners shall, in the two London Gazettes next after the removal of such assignee or assignees, and such new appointment as aforesaid, cause advertisements to be inserted, giving notice of such removal and appointment, and directing persons indebted to the bankrupt's estate not to pay any debt to the assignee or assignees so removed; and if such new conveyance as aforesaid shall be ordered as aforesaid, it shall be valid without any conveyance from any former assignee or assignees, or his or their heirs or assigns: Provided that the order so made for vacating any bargain and sale be enrolled; and any bargain and sale to be executed in

(c) N. B. This clause was repealed by 3 & 4 Will. 4, c. 74, except the commission or fiat issued on or before the 31st Dec. 1833; et vide ante, pt. 1, p. 65.

pursuance thereof shall be enrolled in the same court as the first bargain and sale of the same estate was enrolled."

Sect. 68. "And be it enacted, that the commissioners shall have power, by deed indented and inrolled in any of his majesty's courts of record, to make sale for the benefit of the creditors of any *copyhold or customary-hold* lands, or of any interest to which any bankrupt is entitled therein, and thereby to entitle or authorize any person or persons on their behalf to surrender the same for the purpose of any purchaser or purchasers being admitted thereto."

Sect. 69. "And be it enacted, that every person to whom any sale of copyhold or customary lands or tenements shall be made by the commissioners shall, before he enter into or take any profit of the same, agree and compound with the lords of the manors of whom the same shall be holden for fines, dues and other services as theretofore have been usually paid for the same, and thereupon the said lords shall, at the next or any subsequent court to be holden for the said manors, grant unto such vendee, upon request, the said copy or customary lands or tenements for such estate or interest as shall have been so sold to him as aforesaid, reserving the ancient rents, customs and services, and shall admit him tenant of the same."

[The 73rd sect. enacts that all conveyances by a bankrupt, being at the time insolvent, (except on the marriage of his children, or for valuable consideration,) shall be void against any sale by the commissioners.]

Sect. 77. "And be it enacted, that all powers vested in any bankrupt which he might legally execute for his own benefit, (except the right of nomination to any vacant ecclesiastical benefice,) may be executed by the assignees for the benefit of the creditors, in such manner as the bankrupt might have executed the same."

Sect. 78. "And be it enacted, that it shall be lawful for the Lord Chancellor, upon the petition of the assignees or of any purchaser from them of any part of the bankrupt's estate, if such bankrupt shall not try the validity of the commission, or if there shall have been a verdict at law establishing its validity, to order the bankrupt to join in any conveyance of such estate, or any part thereof; and if he shall not execute such conveyance within the time directed by the order, such bankrupt, and all persons claiming under him, shall be stopped from objecting to the validity of such conveyance; and all estate, right or title which such bankrupt had therein shall be as effectually barred by such order as if such conveyance had been executed by him."

[Sect. 79 authorizes the Lord Chancellor, where a trustee of real or personal estate becomes bankrupt, to order a conveyance or assignment to be made by the assignees, &c., to other trustees.]

Sect. 81. "And be it enacted, that all conveyances by, and all contracts and other dealings and transactions by and with any bankrupt, *bonâ fide* made and entered into more than two calendar months before the date and issuing of the commission against him, and all executions and attachments against the lands and tenements or goods and chattels of such bankrupt, *bonâ fide* executed or levied more than two calendar months before the

issuing of such commission, shall be valid notwithstanding any prior act of bankruptcy by him committed (*d*): Provided the person or persons so dealing with such bankrupt, or at whose suit or on whose account such execution or attachment shall have issued, had not at the time of such conveyance, contract, dealing or transaction, or at the time of executing or levying such execution or attachment, notice of any prior act of bankruptcy by him committed (*e*): Provided also, that where a commission has been superseded, if any other commission shall issue against any person or persons comprised in such first commission, within two calendar months next after it shall have been superseded, no such conveyance, contract, dealing or transaction, execution or attachment shall be valid, unless made, entered into, executed or levied more than two calendar months before the issuing the first commission."

[The 82nd sect. enacts that all payments by and to a bankrupt before the date of the commission shall be deemed valid, if the party had not notice of the act of bankruptcy.]

Sect 83. "And be it enacted, that the issuing of a commission shall be deemed notice of a prior act of bankruptcy, (if an act of bankruptcy had been actually committed before the issuing the commission,) if the adjudication of the person or persons against whom such commission has issued shall have been notified in the London Gazette, and the person or persons to be affected by such notice may reasonably be presumed to have seen the same."

[By the 85th sect., bodies corporate and public companies shall be deemed to have notice through any accredited agent.]

Sect. 86. "And be it enacted, that no purchase from any bankrupt *bond fide* and for valuable consideration, where the purchaser had notice at the time of such purchase of an act of bankruptcy by such bankrupt committed, shall be impeached by reason thereof, unless the commission against such bankrupt shall have been sued out within twelve calendar months after such act of bankruptcy (*e*)."

Sect. 87. "And be it enacted, that no title to any real or personal estate sold under any commission, or under any order in bankruptcy, shall be impeached by the bankrupt, or any person claiming under him, in respect of any defect in the suing out of the commission, or in any of the proceedings under the same, unless the bankrupt shall have commenced proceed-

(*d*) In *Godson v. Sanctuary*, 1 Nev. & Man. 52, the sheriff seized under a fi. fa. at eleven o'clock on the 13th August; a commission of bankrupt issued against the debtor at a later hour on the 13th October in the same year. The sale took place subsequently to the issuing of the commission. It was held that the seizure was a "levying" within the section, and that more than *two months* had elapsed between the seizure and the issuing of the com-

mission. This case, therefore, furnishes an exception to the rule, that in contemplation of law there is no division of a day.

(*e*) In *Read v. Ward*, 2 Eq. Abr. 119, 7 Vin. 119, 123, notice of the act of bankruptcy was held to take away the benefit of the then existing statutes. And see *Ex parte Mountford*, *Re Ponten*, 1 Mont. Ca. in Bankruptcy, 81.

ings to supersede the said commission, and duly prosecuted the same within twelve calendar months from the issuing thereof."

1 & 2 WILL. IV. c. 56.

"An act to establish a court in bankruptcy (g)."

Sect. 26. "That where any person shall have been adjudged a bankrupt, all such present and future *real estate* of such bankrupt, whether in the united kingdom of Great Britain and Ireland, or in any of the dominions, plantations or colonies belonging to his majesty, *as by the said recited act (h) is directed to be conveyed by the commissioners to the assignees*, shall *vest* in such bankrupt's assignee or assignees for the time being, *by virtue of his or their appointment*, without any deed of conveyance for that purpose; and as often as any such assignee or assignees shall die, or be lawfully removed or displaced, and a new assignee or assignees shall be duly appointed, such of the aforesaid real estate as shall remain unsold or unconveyed, shall by virtue of such appointment vest in the new assignee or assignees, either alone or jointly with the existing assignees, as the case may require, without any conveyance for that purpose."

2 VICT. c. 11.

"An act for the better protection of purchasers against judgments, crown debts, lis pendens, and fiats in bankruptcy."

"Whereas it is desirable that further protection should be afforded to purchasers against judgments, crown debts, and lis pendens: Be it therefore enacted by" &c., "that no judgment shall hereafter be docketed under the provisions of an act passed in the fourth and fifth years of the reign of their late majesties King William and Queen Mary, intituled, 'An Act for the better Discovery of Judgments in the Courts of King's Bench, Common Pleas and Exchequer, at Westminster,' but that all such dockets shall be finally closed immediately after the passing of this act, without prejudice to the operation of any judgment already docketed and entered under the said recited act, except so far as any such judgment may be affected by the provisions hereinafter contained."

Sect. 2. "And be it enacted, that no judgment already docketed and entered under the said recited act of their late majesties King William and Queen Mary shall, after the 1st day of August, 1841, affect any lands, tenements or hereditaments, as to purchasers, mortgagees or creditors, unless and until such memorandum or minute thereof as is prescribed in an act

(g) See observations on this act, ante, pt. 1, p. 302, et seq. Vide also reference to 3 & 4 Will. 4, c. 47, authorizing his majesty to give further powers to the judges of the Court of Bankruptcy, &c., and an authority under that act to any one or more of the judges of the court to exercise the same powers as are given by 1 &

2 Will. 4, c. 56, to any three of them, ante, pt. 1, p. 304. Et vide 2 & 3 Vict. c. 11, ss. 12, 13; 2 & 3 Vict. c. 29, post. Vide also 5 & 6 Vict. c. 122, and 7 & 8 Vict. c. 70, referred to, ante, pt. 1, pp. 304, 305.

(h) The act of 6 Geo. 4, c. 16.

passed in the first and second years of her present majesty Queen Victoria, intituled, 'An Act for abolishing Arrest on Mesne Process and Civil Actions, except in certain Cases, for extending the Remedies of Creditors against the Property of Debtors, and for amending the Laws for the Relief of Insolvent Debtors in England,' shall be left with the senior master of the Court of Common Pleas at Westminster, who shall forthwith enter the same in manner thereby directed in regard to judgments; and such officer shall be entitled for any such entry to the sum of five shillings."

Sect. 3. "And be it enacted, that in addition to the entry by the said last-mentioned act or by this act required to be made in a book by the senior master, of the particulars to be contained in every memorandum or minute left with him of any judgment, decree or order, rule or order, he shall insert in such book the year and the day of the month when every such memorandum or minute is so left with him.

Sect. 4. "And be it enacted, that all judgments of any of the superior courts, decrees or orders in any court of equity, rules of a court of common law, and orders in bankruptcy or lunacy, which since the passing of the said recited act of the first and second years of the reign of her present majesty have been registered under the provisions therein contained, or which shall hereafter be so registered, shall, after the expiration of five years from the date of the entry thereof, be null and void against lands, tenements, and other hereditaments, as to purchasers, mortgagees or creditors, unless a like memorandum or minute as was required in the first instance is again left with the senior master of the said Court of Common Pleas within five years before the execution of the conveyance, settlement, mortgage, lease or other deed or instrument vesting or transferring the legal or equitable right, title, estate or interest in or to any such purchaser or mortgagee for valuable consideration; or as to creditors, within five years before the right of such creditors accrued; and so, *toties quoties*, at the expiration of every succeeding five years; and the senior master shall forthwith re-enter the same in like manner as the same was originally entered; and such officer shall be entitled for any such re-entry to the sum of one shilling."

Sect. 5. "Provided also and be it enacted, that as against purchasers and mortgagees without notice of any such judgment, decrees or orders, rules or orders as aforesaid, none of such judgments, decrees or orders, rules or orders, shall bind or affect any lands, tenements or hereditaments, or any interest therein, further or otherwise or more extensively in any respect, although duly registered, than a judgment of one of the superior courts aforesaid would have bound such purchaser or mortgagee before the said act of the first and second years of the reign of her present majesty, where it had been duly docketed according to the law then in force."

Sect. 6. "Provided also and be it enacted, that nothing in the said recited act of her present majesty nor in this act contained shall extend to revive or restore any judgment which shall be extinguished or barred, nor shall the same extend to affect or prejudice any judgment as between the parties thereto, or their representatives, or those deriving as volunteers under them."

Sect. 7. " And be it enacted, that no *lis pendens* shall bind a purchaser or mortgagee without express notice thereof, unless and until a memorandum or minute, containing the name and the usual or last known place of abode, and the title, trade or profession of the person whose estate is intended to be affected thereby, and the court of equity, and the title of the cause or information, and the day when the bill or information was filed, shall be left with the senior master of the said Court of Common Pleas, who shall forthwith enter the same particulars in a book as aforesaid, in alphabetical order, by the name of the person whose estate is intended to be affected by such *lis pendens*; and such officer shall be entitled for any such entry to the sum of 2s. 6d.; and the provisions hereinbefore contained in regard to the re-entering of judgments every five years, and the fee payable to the officer thereon, shall extend to every case of *lis pendens* which shall be registered under the provisions of this act."

Sect. 8. " And be it enacted, that no judgment, statute or recognizance which shall hereafter be obtained or entered into in the name or upon the proper account of her majesty, her heirs or successors, or inquisition by which any debt shall be found due to her majesty, her heirs or successors, or obligation or specialty which shall hereafter be made to her majesty, her heirs or successors, in the manner directed by an act passed in the thirty-third year of the reign of his late majesty King Henry the Eighth, intituled 'The Erection of the Court of Surveyors of the King's Lands, and the Names of the Officers there, and their Authority,' or any acceptance of office which shall hereafter be accepted by officers whose lands shall thereby become liable for the payment and satisfaction of arrearages under the provisions of the act passed in the thirteenth year of the reign of her late majesty Queen Elizabeth, intituled 'An Act to make the Lands, Tenements, Goods, and Chattels of Tellers, Receivers, et cætera, liable to the Payment of their Debts,' shall affect any lands, tenements or hereditaments as to purchasers or mortgagees, unless and until a memorandum or minute, containing the name and the usual or last place of abode, and the title, trade or profession of the person whose estate is intended to be affected thereby, and also, in the case of any judgment, the court and the title of the cause in which such judgment shall have been obtained, and the date of such judgment, and the amount of the debt, damages and costs thereby recovered, and also, in the case of a statute or recognizance, the sum for which the same was acknowledged, and before whom the same was acknowledged, and the date of the same, and also, in the case of an inquisition, the sum thereby found to be due, and the date of the same, and also, in the case of an obligation or specialty, the sum in which the obligor shall be bound, or for which the obligation or specialty shall be made, and the date of the same, and also, in the case of acceptance of office, the name of the office, and the time of the officer accepting the same, shall be left with the senior master of the said Court of Common Pleas, who shall forthwith enter the same particulars in a book, to be intituled 'The Index to Debtors and Accountants to the Crown,' in alphabetical order, by the name of the person whose estate is intended to be affected by such judgment, statute or recognizance, inquisition, obligation or specialty, or the

acceptance of any office; and such officer shall be intitled for any such entry to the sum of 2s. 6d.; and all persons shall be at liberty to search the same book, and also the other book to be kept according to the provisions of the said recited act of the first and second years of the reign of her present Majesty, or either of the said books, on payment of the sum of 1s., whether one only or both of the said books shall be searched, and no multiplication of books is to increase the fee."

Sect. 9. "And be it enacted, that whenever a quietus shall be obtained by a debtor or accountant to the crown, and an office copy thereof shall be left with the senior master of the said Court of Common Pleas, together with a certificate, signed by the accountant-general, that the same may be registered, the said master shall forthwith enter the same in the said book of debtors and accountants to the crown, in alphabetical order, by the name of the person whose estate is intended to be discharged by such quietus, with the date, and shall for any such entry be entitled to a fee of 2s. 6d."

Sect. 10. "And whereas it is expedient to make further provision for the discharge of an estate belonging to a debtor or accountant to the crown from the claim of the crown in the hands of a purchaser or mortgagee, although the debt or liability shall not be fully discharged; be it therefore enacted, that it shall be lawful for the commissioners of her Majesty's treasury of the United Kingdom of Great Britain and Ireland for the time being, or any three of them, by writing under their hands, upon payment of such sums of money as they may think fit to require into the receipt of her Majesty's Exchequer, to be applied in liquidation of the debt or liability of any debtor or accountant to the crown, or upon such other terms as they may think proper, to certify that any lands, tenements or hereditaments of any such crown debtor or accountant shall be held by the purchaser or mortgagee or intended purchaser or mortgagee thereof, his or their heirs, executors, administrators and assigns, wholly exonerated and discharged from all further claims of her Majesty, her heirs or successors, for or in respect of any debt, claim or liability, present or future, of the debtor or accountant to whom such lands, tenements or hereditaments belonged, or in cases of leases for fines, to certify that the lessees, their heirs, executors, administrators and assigns, shall hold so exonerated and discharged, without prejudice to the rights and remedies of the crown against the reversion of the lands, tenements or hereditaments comprised in any such leases, and the rents and covenants reserved and contained by and in the same; and thereupon the same lands, tenements or hereditaments shall respectively be held accordingly, wholly exonerated and discharged as aforesaid, but in the cases of leases without prejudice as aforesaid.

Sect. 11. "Provided also and be it enacted, that any such certificate of the discharge of any such lands, tenements or other hereditaments by virtue of this act, shall in nowise impeach, lessen or affect the right or power of her Majesty, her heirs or successors, to levy the whole of any debt or demand which may at any time be due from any such debtor or accountant to the crown out of or from any other lands, tenements or here-

ditaments, which would have been liable thereto in case no such certificate had been granted, and no such discharge had been obtained."

Sect. 12. "And whereas it is expedient that further provision should be made for the protection of purchasers against secret acts of bankruptcy and fiats in bankruptcy; be it therefore enacted, that all conveyances by any bankrupt *bonâ fide* made and executed before the date and issuing of the fiat against such bankrupt shall be valid, notwithstanding any prior act of bankruptcy by him committed, provided the person or persons to whom such bankrupt so conveyed had not at the time of such conveyance notice of any prior act of bankruptcy by him committed."

Sect. 13. "And be it enacted, that no purchase from any bankrupt *bonâ fide* and for valuable consideration, where the purchaser had notice at the time of such purchase of an act of bankruptcy by such bankrupt committed, shall be impeached by reason thereof, unless the commission against such bankrupt shall have been sued out within twelve calendar months after such act of bankruptcy."

Sect. 14. "And be it enacted, that this act shall not extend to Ireland."

2 & 3 VICT. c. 29.

"An act for the better protection of parties dealing with persons liable to the bankrupt laws."

"Whereas by an act passed in the sixth year of the reign of his late Majesty King George the Fourth, intituled 'An Act to amend the Laws relating to Bankrupts,' it was among other things enacted, that all payments really and *bonâ fide* made by any bankrupt, or by any person on his behalf, before the date and issuing of the commission against such bankrupt, to any creditor of such bankrupt (such payment not being a fraudulent preference of such creditor), should be deemed valid, notwithstanding any prior act of bankruptcy by such bankrupt committed, and that all payments really and *bonâ fide* made to any bankrupt before the date and issuing of the commission against such bankrupt should be deemed valid, notwithstanding any prior act of bankruptcy committed, and that such creditor should not be liable to refund the same to the assignees of such bankrupt, provided the person so dealing with the bankrupt had not at the time of such payment to such bankrupt notice of any bankruptcy committed: And whereas by an act passed in this present session of parliament, intituled 'An Act for the better Protection of Purchasers against Judgments, Crown Debts, Lis pendens, and Fiats in Bankruptcy,' it is amongst other things enacted, that all conveyances by any bankrupt *bonâ fide* made and executed before the date and issuing of the fiat against such bankrupt shall be valid, notwithstanding any prior act of bankruptcy by him committed, provided the person or persons to whom such bankrupt so conveyed had not at the time of such conveyance notice of any prior act of bankruptcy by him committed: And whereas it is expedient that further protection should be given to persons dealing with bankrupts before the issuing of any fiat against them: be it therefore enacted by, &c., that all contracts,

dealings and transactions by and with any bankrupt really and *bonâ fide* made and entered into before the date and issuing of the fiat against him, and all executions and attachments against the lands and tenements, or goods and chattels of such bankrupt, *bonâ fide* executed or levied before the date and issuing of the fiat, shall be deemed to be valid, notwithstanding any prior act of bankruptcy by such bankrupt committed; provided the person or persons so dealing with such bankrupt, or at whose suit, or on whose account such execution or attachment shall have issued, had not at the time of such contract, dealing or transaction, or at the time of executing or levying such execution or attachment, notice of any prior act of bankruptcy by him committed; provided also, that nothing herein contained shall be deemed or taken to give validity to any payment made by any bankrupt, being a fraudulent preference of any creditor or creditors of such bankrupt, or to any execution founded on a judgment on a warrant of attorney or cognovit given by any bankrupt by way of such fraudulent preference."

Sect. 2. "And be it further enacted, that this act may be repealed or altered by any other act in this present session of parliament."

7 GEO. IV. c. 57.

"An act to amend and consolidate the laws for the relief of insolvent Debtors in England.

Sect. 11. "And be it further enacted, that such prisoner shall, at the time of subscribing the said petition, duly execute a conveyance and assignment to the provisional assignee of the said court, in such form as is to this act annexed, of all the estate, right, title, interest and trust of such prisoner, in and to all the real and personal estate and effects of such prisoner, both within this realm and abroad, except the wearing apparel, bedding and other such necessities of such person, and his or her family, and the working tools and implements of such prisoner, not exceeding in the whole the value of twenty pounds, and of all future estate, right, title, interest and trust of such prisoner, in or to any real and personal estate and effects, within this realm or abroad, which such prisoner may purchase, or which may revert, descend, be devised or bequeathed, or come to him or her, before he or she shall become entitled to his or her final discharge in pursuance of this act, according to the adjudication made in that behalf; or in case such prisoner shall obtain his or her discharge from custody without any adjudication being made in the matter of his or her petition, then before such prisoner shall be at large and out of custody, and of all debts due or growing due to such prisoner, or to be due to him or her before such discharge as aforesaid; which conveyance and assignment, so executed as aforesaid, in form aforesaid, shall vest all the real and personal estate and effects of such prisoner, and all such future real and personal estate and effects as aforesaid, of every nature and kind whatsoever, and all such debts as aforesaid, in the said provisional assignee; and the same shall be made subject to a proviso, that in case the petition of any such

prisoner shall be dismissed by the said court, such conveyance and assignment shall, from and after such dismissal, be null and void to all intents and purposes; and the said court is hereby empowered to dismiss any such petition in the matter whereof a final adjudication shall not have been made in pursuance of this act, at any time when it shall seem fit to the said court to dismiss the same: Provided always, that where in any case, by leave of the said court, any amendment shall be made in any such petition, or an amended petition shall be filed as of the date of the original petition, which the said court is hereby empowered to do and authorize without dismissing such original petition, the assignment and conveyance executed in such case shall not thereby be affected, but shall stand good to all intents and purposes, notwithstanding such amendment or amended petition so filed as aforesaid."

Sect. 13. "And be it further enacted, that the filing of the petition of every person in actual custody, who shall be subject to the laws concerning bankrupts, and who shall apply by petition to the said court for his or her discharge from custody, according to this act, shall be accounted and adjudged an act of bankruptcy from the time of filing such petition; and that any commission issuing against such person, and under which he or she shall be declared bankrupt before the time appointed by the said court, and advertised in the London Gazette, for hearing the matters of such petition, or at any time within two calendar months from the time of filing such petition, shall have effect to avoid any conveyance and assignment of the estate and effects of such person, which shall have been made in pursuance of the provisions of this act: Provided always, that the filing of such petition shall not be deemed an act of bankruptcy, unless such person be so declared bankrupt before the time so advertized as aforesaid, or within such two calendar months as aforesaid; but that every such conveyance and assignment shall be good and valid, notwithstanding any commission of bankrupt under which such person shall be declared bankrupt after the time so advertised as aforesaid, and after the expiration of such two calendar months as aforesaid (i)."

Sect. 19. "And be it further enacted, that it shall and may be lawful for the said court, at any time after the filing of the petition of any such prisoner as aforesaid as to the said court shall seem expedient, to appoint a proper person or persons, being a creditor or creditors of such prisoner, to be assignee or assignees of the estate and effects of such prisoner for the purposes of this act; and when such assignee or assignees shall have signified to the said court his or their acceptance of the said appointment, the estate, effects, rights and powers of such prisoner, vested in such provisional assignee as aforesaid, shall immediately be conveyed and assigned by such provisional assignee to the said assignee or assignees, in trust for the benefit of such assignee or assignees and the rest of the creditors of such

(i) As to the debts which would be deemed sufficient to support a fiat of bankruptcy against an insolvent trader, see *Jellis v. Mountford*, 5 Barn. & Ald. 256; *Ex parte Shuttleworth*, *Re Pacey*, 2 Glyn & Jameson, 68.

prisoner, in respect of or in proportion to their respective debts, according to the provisions of this act; and after such conveyance and assignment by such provisional assignee, all the estate and effects of such prisoner shall be to all intents and purposes as effectually and legally vested by relation in such assignee or assignees as if the said conveyance and assignment had been made by such prisoner to him or them: Provided nevertheless, that no act done under or by virtue of such first conveyance and assignment shall be thereby rendered void or defeated, but shall remain as valid as if no such relation had taken place; and that every such conveyance and assignment as aforesaid to such provisional assignee, and a counterpart of every such conveyance and assignment by such provisional assignee to such other assignee or assignees, shall be filed of record in the said court; and a copy of any such record, made upon parchment, and purporting to have the certificate of the provisional assignee of the said court, or his deputy appointed for that purpose, endorsed thereon, and to be sealed with the seal of the said court, shall be recognised and received as sufficient evidence of such conveyance and assignment, and of the title of the provisional and other assignee or assignees under the same, in all courts, and before commissioners of bankrupt and justices of the peace, to all intents and purposes, without any proof whatever given of the same, or of any other proceeding in the said court in the matter of such prisoner's petition."

Sect. 20. " And be it further enacted, that the assignee or assignees of the estate and effects of any such prisoner shall, with all convenient speed after his or their accepting such conveyance and assignment as aforesaid, use his or their best endeavours to receive and get in the estate and effects of such prisoner, and shall, with all convenient speed, make sale of all such estate and effects; and if such prisoner shall be interested in or entitled to any real estate, either in possession, reversion or expectancy, such real estate within the space of six months after the conveyance and assignment made to such assignee or assignees in that behalf, or within such other time as the said court shall direct, shall be sold by public auction, in such manner and at such place or places as shall thirty days before any such sale be approved, in writing under their hands, by the major part in value of the creditors of such prisoner entitled to the benefit thereof, who shall meet together on notice of such meeting published fourteen days previous thereto in the London Gazette, and also in some daily newspaper printed and published in London or within the bills of mortality, if the prisoner before his or her going to prison resided in London or within the bills of mortality, and if such prisoner resided elsewhere within the united kingdom, then in some printed newspaper which shall be generally circulated in or near the place where such prisoner resided at the time aforesaid; and in case such prisoner shall be entitled to any *copyhold or customary estate*, the conveyance and assignment by such provisional assignee to such assignee or assignees as aforesaid, shall be entered on the court rolls of the manor of which such copyhold or customary estate shall be holden; and thereupon it shall be lawful for such assignee or assignees

to surrender or convey such copyhold or customary estate to any purchaser or purchasers of the same from such assignee or assignees, as the said court shall direct; and the rents and profits thereof shall be in the meantime received by such assignee or assignees for the benefit of the creditors of such prisoner, without prejudice, nevertheless, to the lord or lords of the manor of which any such copyhold or customary estate shall be holden (*k*)."

Sect. 22. "And whereas many persons who may petition the said court for relief under this act may be seized and possessed of lands, tenements and hereditaments, to hold for the term of their natural lives, with power of granting leases and taking fines, reserving small rents on such estate, for one, two or three lives in possession or reversion, or for some number of years determinable upon lives, or have power over such real or personal estate which such persons could execute for their own advantage, and which said powers ought, on such persons petitioning the said court for relief under this act, to be executed for the benefit of the creditors of such persons:" Be it therefore enacted, "That in every such case all and every the powers of leasing such lands, tenements and hereditaments, and all other such powers as aforesaid, over such real or personal estates, which are or shall be vested in any prisoner who shall petition the said court for relief under this act, and all trusts or powers whatever vested in such prisoner, or created for his or her use or benefit, which such prisoner might legally execute for his or her own benefit, (except the right of nomination to any vacant ecclesiastical benefice,) shall be and are hereby vested in the assignee or assignees of the real and personal estate of such prisoner, by virtue of this act, so far as such prisoner could by law vest such power in any person to whom he or she might lawfully have conveyed such property, to be by such assignee or assignees executed for the benefit of all and every the creditors of such prisoner under this act."

1 WILL. IV. c. 38.

"An act to continue and amend the laws for the relief of insolvent debtors in England (l)."

Sect. 5. "And whereas it may often happen that some interest in lands and tenements may become vested in the provisional assignee of the said

(*k*) Ante, pt. 1, p. 307, n. (*i*). A court baron being a court of inferior jurisdiction, and not a court of record, the author apprehends that a short entry of the assignment to the general assignee on the steward's minutes of the court, would be sufficient evidence of a compliance with this section of the act. See *Doe d. Smith v. Glenfield*, 1 Bing. N. C. 729; 1 Sc. 699; *Fisher v. Lane*, 2 Sir W. Bl. 834; *Rex v. Smith*, 8 Bar. & Cr. 341; but

minutes only could not be given in evidence of an act in a court of record; *Rex v. Smith*, sup.; and see ante, pt. 1, p. 307, n. (*h*).

(*l*) N. B. The act of 7 Geo. 4, c. 57, and this act, were continued by the 2 Will. 4, c. 44, until 1st June, 1835, and thence until the end of the then next session of parliament. Vide also sections 37 and 47 of 1 & 2 Vict. c. 110, post.

court, which appears to be of no value to creditors, but nevertheless it may be reasonable and expedient that the said provisional assignee should make or join in making some conveyance or assignment of the same, and that the same should be done without the expence attending advertisements and meetings of creditors as prescribed by the said first mentioned act in certain cases : ” Be it therefore enacted, “ That it shall and may be lawful for the said court, at any time after the day gazetted for the hearing of the matters of the petition of any insolvent debtor, if no creditor shall have become assignee of his or her estate and effects, and if it shall appear fit, upon such notice given by advertisement or otherwise to the creditors or any of them as the said court shall in any case direct, to order the said provisional assignee to make or join in making any conveyance or assignment of any such interest as to the said court may appear just and reasonable, without observing the provisions of the said first mentioned act as to the sale of real property, by the provisional or other assignees of the estates of insolvent debtors (*m*). ”

Sect. 6. “ And it is further declared and enacted, that all assignments and conveyances heretofore made or to be made by such provisional assignee in any such cases, by order of the said court, shall be and the same are hereby declared to be good and valid to all intents and purposes, any thing in the said first mentioned act or in any other act to the contrary notwithstanding. ”

Sect. 7. “ And whereas it is expedient to prescribe a form of conveyance and assignment from the provisional assignee to any other assignee or assignees when appointed by the said court, and also to remove any doubts as to the validity or effect of any conveyances or assignments at any time heretofore made and executed by the said provisional assignee, by virtue of any order of the said court ; ” Be it therefore declared and enacted, “ That every conveyance and assignment hereafter to be made and executed by the provisional assignee for the time being, to any other assignee or assignees, by virtue of any order of the said court, shall be in such form as is to this act annexed ; and that every such conveyance and assignment, and also every conveyance and assignment at any time heretofore made and executed by the provisional assignee for the time being, in obedience to any order of the court for relief of insolvent debtors, shall be deemed and taken to be valid and effectual to all intents and purposes whatever, and fully and effectually to vest and to have vested all and every estate and estates, real and personal, and all and every right, title, interest and trust in and to the same, of what nature or kind soever, to which the insolvent debtor in each case respectively shall or may be or shall or may have been entitled in any manner or by any means whatsoever, or which such insolvent debtor shall or may be or shall or may have been required by law to convey and assign in trust for his or her creditors. ”

(*m*) See *Ex parte Sidebotham, Re Barrington*, 1 Mont. & Ayr. 664.

1 & 2 VICT. c. 110.

“ An act for abolishing arrest on mesne process in civil actions, except in certain cases; for extending the remedies of creditors against the property of debtors; and for amending the laws for the relief of insolvent debtors in England.”

Sect. 11. “ And whereas the existing law is defective in not providing adequate means for enabling judgment creditors to obtain satisfaction from the property of their debtors, and it is expedient to give judgment creditors more effectual remedies against the real and personal estate of their debtors than they possess under the existing law: Be it therefore further enacted, That it shall be lawful for the sheriff or other officer to whom any writ of elegit, or any precept in pursuance thereof, shall be directed, at the suit of any person, upon any judgment which at the time appointed for the commencement of this act shall have been recovered, or shall be thereafter recovered, in any action in any of her majesty’s superior courts at Westminster, to make and deliver execution unto the party in that behalf suing, of all such lands, tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of *copyhold* or *customary* tenure, as the person against whom execution is so sued, or any person in trust for him, shall have been seized or possessed of at the time of entering up the said judgment, or at any time afterwards, or over which such person shall at the time of entering up such judgment, or at any time afterwards, have any disposing power which he might without the assent of any other person exercise for his own benefit, in like manner as the sheriff or other officer may now make and deliver execution of one moiety of the lands and tenements of any person against whom a writ of elegit is sued out; which lands, tenements, rectories, tithes, rents and hereditaments, by force and virtue of such execution, shall accordingly be held and enjoyed by the party to whom such execution shall be so made and delivered, subject to such account in the court out of which such execution shall have been sued out as a tenant by elegit is now subject to in a court of equity: Provided always, that such party suing out execution, and to whom any *copyhold* or *customary* lands shall be so delivered in execution, shall be liable and is hereby required to make, perform and render to the lord of the manor or other person entitled, all such and the like payments and services as the person against whom such execution shall be issued would have been bound to make, perform and render in case such execution had not issued (n); and that the party so suing out such execution, and to whom any such *copyhold* or *customary* lands shall have been so delivered in execution, shall be entitled to hold the same until the amount of such payments, and the value of such services, as well as the amount of the judgment, shall have been levied: Provided also, that as against purchasers, mortgagees, or creditors who shall have become

(n) Ante, pt. 1, pp. 47, n. (o), 301, n. (m), 342, n. (m).

such before the time appointed for the commencement of this act, such writ of *elegit* shall have no greater or other effect than a writ of *elegit* would have had in case this act had not passed."

Sect. 19. " Provided always and be it further enacted, That no judgment of any of the said superior courts, nor any decree or order in any court of equity, nor any rule of a court of common law, nor any order in bankruptcy or lunacy, shall by virtue of this act affect any lands, tenements or hereditaments, as to purchasers, mortgagees or creditors, unless and until a memorandum or minute, containing the name and the usual or last known place of abode, and the title, trade or profession of the person whose estate is intended to be affected thereby, and the court and the title of the cause or matter in which such judgment, decree, order or rule shall have been obtained or made, and the date of such judgment, decree, order or rule, and the account of the debt, damages, costs or monies thereby recovered or ordered to be paid, shall be left with the senior master of the Court of Common Pleas at Westminster, who shall forthwith enter the same particulars in a book in alphabetical order by the name of the person whose estate is intended to be affected by such judgment, decree, order or rule; and such officer shall be entitled for any such entry to the sum of five shillings; and all persons shall be at liberty to search the same book on payment of the sum of one shilling."

Sect. 37. " And be it enacted, That upon the filing of such petition by such prisoner, or on the filing of such petition by such creditor or creditors as aforesaid, and the evidence in support thereof, as the case may be, it shall be lawful for the said court for the relief of insolvent debtors, and such court is hereby authorized and required *to order* that *all the real and personal estate* and effects of such prisoner, both within this realm and abroad, except the wearing apparel, bedding, and other such necessities of such person, and his family, and the working tools and implements of such prisoner, not exceeding in the whole the value of twenty pounds, *and all the future estate, right, title, interest and trust of such prisoner in or to any real and personal estate* and effects within this realm or abroad, which such prisoner may purchase, or which may revert, descend, be devised or bequeathed, or come to him, before he shall become entitled to his final discharge in pursuance of this act, according to the adjudication made in that behalf, or in case such prisoner shall obtain his full discharge from custody without any adjudication being made by the said court, then before such prisoner shall be so fully discharged from custody, and all debts due or growing due to such prisoner, or to be due to him or her before such discharge as aforesaid, shall be *vested* in the provisional assignee for the time being of the estates and effects of insolvent debtors in England; and *such order* shall be entered of record in the same court, and such notice thereof shall be published as the said court shall direct; and *such order* when so made, shall, without any conveyance or assignment, *vest* all the real and personal estate and effects of such prisoner, and all such future real and personal estate and effects as aforesaid, of every nature and kind whatsoever, and all such debts as aforesaid, in the said provisional assignee: Provided always, that in case the petition of any

such prisoner shall be dismissed by the said court, *such vesting order* made in pursuance of such petition shall, from and after such dismissal, be null and void to all intents and purposes: Provided also, that in case any such vesting order as aforesaid shall become null and void by the dismissal of the prisoner's petition, all the acts theretofore done by the said provisional assignee, or any person or persons acting under his authority according to the provisions of this act, shall be good and valid, and no action or suit shall be commenced against such provisional assignee, or against any person duly acting under his authority, except to recover any property, estate, money or effects of such prisoner detained after an order made by the court for the delivery thereof, and demand made thereupon; Provided also, that when *such vesting order* shall have been made on the petition of a creditor as aforesaid, it shall be lawful for the said court, if it shall seem just and right, but not without proof made to the satisfaction of the said court of the consent of the petitioning creditor, to make order declaring *such vesting order* to be null and void, and the same shall thereupon be null and void to all intents and purposes."

Sect. 47. " And be it further enacted, That the assignee or assignees of the estate and effects of any such prisoner shall, with all convenient speed after his or their appointment, use his or their best endeavours to receive and get in the estate and effects of such prisoner, and shall with all convenient speed make sale of all such estate and effects; and if such prisoner shall be interested in or entitled to any real estate, either in possession, reversion or expectancy, such real estate, within the space of six months after the appointment of such assignee or assignees, or within such other time as the said court shall direct, shall be sold by public auction, in such manner and at such place or places as shall thirty days before any such sale be approved, in writing under their hands, by the major part in value of the creditors of such prisoner entitled to the benefit thereof, who shall meet together on notice of such meeting published fourteen days previous thereto in the London Gazette, and also in some daily newspaper printed and published in London or within the bills of mortality, if the prisoner before his or her going to prison resided in London or within the bills of mortality; and if such prisoner resided elsewhere within the united kingdom, then in some printed newspaper which shall be generally circulated in or near the place where such prisoner resided at the time aforesaid; and in case such prisoner shall be entitled to any *copyhold* or *customary* estate, a certified copy of such *vesting order* as aforesaid, and a like certified copy of the appointment of such assignee or assignees as aforesaid, shall be entered on the court rolls of the manor of which such *copyhold* or *customary* estate shall be holden, and thereupon it shall be lawful for such assignee or assignees to surrender or convey such *copyhold* or *customary* estate to any purchaser or purchasers of the same from such assignee or assignees as the said court shall direct; and the rents and profits thereof shall be in the meantime received by such assignee or assignees for the benefit of the creditors of such prisoner, without prejudice nevertheless to the lord or lords of the manor of which any such *copyhold* or *customary* estate shall be holden."

3 & 4 VICT. c. 82.

“ An act for further amending the act for abolishing arrest on mesne process in civil actions.”—[Vide also 2 & 3 Vict. c. 39.]

“ Whereas by an act passed in the second year of the reign of her majesty, intituled ‘ An Act for abolishing Arrest on Mesne Process in Civil Actions, except in certain Cases ; for extending the Remedies of Creditors against the Property of Debtors ; and for amending the Laws for the Relief of Insolvent Debtors in England,’ it was amongst other things enacted, that if any person against whom any judgment should have been entered up in any of her majesty’s superior courts at Westminster should have any government stock, funds or annuities, or any stock or shares of or in any public company in England (whether incorporated or not), standing in his name in his own right, or in the name of any person in trust for him, it should be lawful for a judge of one of the superior courts, on the application of any judgment creditor, to order that such stock, funds, annuities or shares, or such of them, or such part thereof respectively as he should think fit, should stand charged with the payment of the amount for which judgment should have been so recovered, and interest thereon, and such order should entitle the judgment creditor to all such remedies as he would have been entitled to if such charge had been made in his favour by the judgment debtor ; provided that no proceedings should be taken to have the benefit of such charge until after the expiration of six calendar months from the date of such order : And whereas doubts have been entertained whether the said provisions extend to the cases hereinafter mentioned ; Now therefore be it declared and enacted by,” &c., “ that the aforesaid provisions of the said act shall be deemed and taken to extend to the interest of any judgment debtor, whether in possession, remainder or reversion, and whether vested or contingent, as well in any such stock, funds, annuities or shares as foresaid, as also in the dividends, interest or annual produce of any such stock, funds, annuities or shares ; and whenever any such judgment debtor shall have any estate, right, title or interest, vested or contingent, in possession, remainder or reversion, in, to or out of any such stock, funds, annuities or shares as aforesaid which now are or shall hereafter be standing in the name of the Accountant-General of the Court of Chancery or the Accountant-General of the Court of Exchequer, or in, to or out of the dividends, interest or annual produce thereof, it shall be lawful for such judge to make any order as to such stock, funds, annuities or shares, or the interest, dividends or annual produce thereof, in the same way as if the same had been standing in the name of a trustee of such judgment debtor : Provided always, that no order of any judge as to any stock, funds annuities or shares standing in the name of the Accountant-General of the Court of Chancery, or the Accountant-General of the Court of Exchequer, or as to the interest, dividends or annual produce thereof, shall prevent the Governor and Company of the Bank of England, or any public company, from permitting any transfer of such stocks, funds, annuities or shares, or payment of the interest, dividends, or annual produce thereof, in such manner as the Court of Chancery or the Court of Exchequer respectively may direct, or shall have any greater effect than if

such debtor had charged such stock, funds, annuities or shares, or the interest, dividends, or annual produce thereof, in favour of the judgment creditor, with the amount of the sum to be mentioned in any such order.

Sect. 2. And whereas it was by the said act further enacted, that no judgment of any of the superior courts of common law at Westminster, nor any decree or order in any court of equity, nor any rule of a court of common law, nor any order in bankruptcy or lunacy, should by virtue of the said act affect any lands, tenements or hereditaments, as to purchasers, mortgagees or creditors, unless and until such a memorandum or minute as therein mentioned should be left with the senior master of the Court of Common Pleas at Westminster: And whereas doubts have been entertained whether a purchaser, mortgagee or creditor, having notice of any such judgment, decree, order or rule as aforesaid, would not in equity be affected thereby, notwithstanding such a memorandum or minute of the same as in the said act is mentioned may not have been left with the senior master of the said Court of Common Pleas; be it therefore further declared and enacted, that no such judgment, decree, order or rule as aforesaid shall by virtue of the said act affect any lands, tenements or hereditaments, at law or in equity, as to purchasers, mortgagees or creditors, unless and until such a memorandum or minute as in the said act in that behalf mentioned shall have been left with the senior master of the said Court of Common Pleas at Westminster; any notice of any such judgment, decree, order or rule to any such purchaser, mortgagee or creditor in anywise notwithstanding."

[Vide also 5 & 6 Vict. c. 116, intituled "An Act for the Relief of Insolvent Debtors," and 7 & 8 Vict. c. 96, intituled "An Act to amend the Law of Bankruptcy" severally noticed, ante, pt. 1, pp. 308, 309.]

10 GEO. IV. c. 50.

"An act to consolidate and amend the laws relating to the management and improvement of his majesty's woods, forests, parks and chases; of the land revenue of the crown within the survey of the Exchequer in England; and of the land revenue of the crown in Ireland; and for extending certain provisions relating to the same to the Isles of Man and Alderney (o)."

Sect. 34. "And be it further enacted, that it shall be lawful for the said commissioners for the time being of his majesty's woods, forests and land revenues, and they are hereby authorized and empowered from time to time to contract and agree with any person or persons, or body or bodies politic, corporate or collegiate, for the sale of, and absolutely to make sale

(o) See reference to the 14th section of this act, providing for the appointment of stewards of manors, &c., being part of the possessions and land revenues of the crown, ante, pt. 1, p. 110. And see 2 Will. 4, c. 1, "for uniting the Office of the Surveyor General of his Majesty's Works and Public Buildings with the Office of the Commissioners of his Ma-

jesty's Woods, Forests and Land Revenues, and for other Purposes relating to the Land Revenues."

[Note.—No seizin is acquired by the commissioners of woods and forests, but the king or queen is still lord or lady of the manor. See *The Queen v. Powell* (Steward of the Manor of Richmond), ante, pt. 1, p. 110, n. (c); p. 531, n. (d).]

and dispose of, for such sum or sums of money as to them shall appear a sufficient consideration for the same, any part or parts of the said possessions and land revenues of the crown to which this act relates, not being part or parcel of any of the royal forests, parks or chases in England."

Sect. 35. " And be it further enacted, that whenever the commissioners for the time being of his majesty's woods, forests and land revenues shall have contracted or agreed with any person or persons, body or bodies politic, corporate or collegiate, under the authority of this act, for the sale to him, her or them, of any part or parts of the said possessions or land revenues of the crown to which this act relates (not being any subsisting lease which may have been purchased or taken as hereinafter mentioned), the purchaser or purchasers, in case the purchase money shall amount to the sum of one hundred pounds, shall cause the same to be paid into the Bank of England, or if the hereditaments purchased shall be situated in Ireland, then either into the Bank of England or the Bank of Ireland, at his or their option ; and the cashiers of the Bank of England or Bank of Ireland, as the case may be, or one of such cashiers, shall, upon the production of any note signed by the said commissioners, specifying the sum to be so paid, and that it is to be so paid to their account, accept and receive the same, and carry the same to the account of the said commissioners of his majesty's woods, forests and land revenues, and give a receipt for the same without fee or reward ; but if such purchase money shall not amount to the sum of one hundred pounds, it shall not be necessary for the purchaser or purchasers to pay the same into the Bank of England or Bank of Ireland, but he or they may, at his or their option, either pay the same into the Bank of England or Bank of Ireland as aforesaid (in which case the cashiers, or one of them, of the Bank of England or Bank of Ireland, as the case may be, shall accept and give a receipt for the same as aforesaid), or to the said commissioners for the time being of his majesty's woods, forests and land revenues, or any one of their receivers, or any agent to be appointed by them for that purpose ; and the said commissioners for the time being of his majesty's woods, forests and land revenues shall, on the production of the receipt of the cashiers or of one of the cashiers of the Bank of England or Bank of Ireland, for such purchase money, or in case the same shall not amount to one hundred pounds, then either on the production of such receipt or on the payment to them, their receiver or agent, of such purchase money, execute to the purchaser or purchasers a conveyance under their hands and seals, of the premises agreed to be sold, and give a receipt for the purchase money under their hands ; and every such conveyance and receipt may be according to the forms for those purposes respectively set forth in the schedule to this act annexed, or in any other forms which may be deemed more convenient ; and every such conveyance and receipt shall be attested, as to the execution and signing thereof by the said commissioner, by at least one witness ; and every such conveyance shall be valid and sufficient to pass all the estate, right and interest of his majesty, his heirs or successors, in and to the part or parts of the said possessions or land revenues of the crown to which the same shall relate, to the person or persons, or body or bodies politic, corporate or collegiate, therein named as the grantee or grantees, for such estate or

estates, to such uses, and upon and for such trusts, intents and purposes (if any) as shall in and by such conveyance, or by reference therein to any other instrument or instruments, or deed or deeds, be expressed or declared of or concerning the same."

[Sect. 43 authorizes the commissioners to convey lands held in perpetuity for lands held for a particular estate, or for any term of years, or to give any lease taken or purchased under the act in exchange for lands held in perpetuity, or a particular estate, or for any term of years.]

Sect. 52. "And be it further enacted, that it shall be lawful for the said commissioners for the time being of his Majesty's woods, forests and land revenues, from time to time to contract for and purchase, for and on behalf of his majesty, his heirs or successors, any manors, lordships, messuages, lands, tenements or hereditaments in fee simple, or any *copyhold* lands or hereditaments, the freehold of which shall be in the crown, or any rents, pensions, annuities, fuel-rights, rights of common, or other charges or rights, whether in fee simple or not, which shall be issuing out of or charged upon or extend over any of the possessions and land revenues of the crown to which this act relates, which shall in their judgment be desirable to be purchased for and on behalf of his Majesty, his heirs or successors; and all such manors, lordships, messuages, lands, tenements and hereditaments, rents, pensions, annuities or other charges, so to be purchased, shall be conveyed or surrendered to his majesty, his heirs and successors, and such conveyances may be either according to the form set forth in the schedule hereto annexed for the conveyance to his majesty of lands, tenements and hereditaments received in exchange, or in any other form which to the said commissioners for the time being of his majesty's woods, forests and land revenues shall seem more proper; and all manors, lordships, messuages, lands, tenements and hereditaments which shall be so purchased, and shall not become extinct by the conveyance or surrender thereof, shall, on the completion of the respective purchases thereof, become part of the possessions and land revenues of his Majesty, his heirs and successors, in right of the crown, and subject to the same provisions, powers and authorities in every respect, including the powers and provisions in this act contained, as the other possessions and land revenues of the crown to which this act relates."

Sect. 69. "Provided always and be it further enacted, that whenever under the powers of sale hereinbefore given, the freehold of any *copyhold* or *customary* tenement, parcel of or holden of any manor belonging to the crown, shall be sold by the commissioners of his Majesty's woods, forests and land revenues, for the purpose of enfranchising such copyhold or customary tenement, or any manorial rights, parcel of any manor belonging to the crown, shall be sold by the said commissioners, the deed or instrument by which such sale shall be effected shall not only be enrolled in the court rolls of the manor of or to which such copyhold or customary tenement or such manorial rights shall have been parcel or appurtenant, by the steward of such manor or his lawful deputy, who is hereby required forthwith to enrol such deed or instrument, upon the production thereof to him; and such steward or deputy stewards having enrolled the said certificate

and receipt, or other instrument as aforesaid, shall attest the same under his hand, and return the same to the purchaser or purchasers."

[Sect. 94 provides for the settling by arbitration of any disputes as to the boundaries of the lands to which the act relates.]

[Vide the act of 19 Geo. III. c. 45, to enable the Chancellor and Council of the Duchy of Lancaster to sell and dispose of certain fee-farm rents and other rents, and to enfranchise copyhold and customary tenements within their survey, and to encourage the growth of timber on lands held of the said duchy. Vide also 7 & 8 Vict. c. 65, intituled "An Act to enable the Council of His Royal Highness Albert Edward, Prince of Wales, to sell and exchange Lands and enfranchise Copyholds, Parcel of the Possessions of the Duchy of Cornwall, to purchase other Lands; and for other Purposes:" and 7 & 8 Vict. c. 105, intituled, "An Act to confirm and enfranchise the Estates of the conventional Tenants of the ancient assessionable Manors of the Duchy of Cornwall, and to quiet Titles within the County of Cornwall as against the Duchy; and for other Purposes;" and see ante, pt. 1, p. 553, n. (u).]

2 WILL. IV. c. 25.

"An act to extend and render more effectual two acts of the first and second and third years of his late Majesty King George the Fourth, respecting the estates thereby vested in the principal officers of the ordnance, and to facilitate the public business of the ordnance department."

"Whereas an act was passed in the first and second years of the reign of his late Majesty King George the Fourth, intituled 'An Act for vesting all Estates and Property occupied for the Ordnance Service in the principal Officers of the Ordnance, and for granting certain Powers to the said principal officers:' And whereas another act was passed in the third year of the reign of his said late Majesty, intituled 'An Act for vesting all Estates and Property occupied for the Barrack Service in any part of the United Kingdom in the principal officers of his Majesty's Ordnance, and for granting certain Powers to the said principal Officers in relation thereto:' And whereas divers messuages, lands, tenements and hereditaments, of *copyhold, customary or ancient demesne* tenure, are now held and may hereafter be purchased and taken for the service of the said ordnance department, and much inconvenience has arisen and may arise by reason of copyhold estates and hereditaments having been excepted out of the provisions and operation of the said recited acts, and also by reason of the said acts not extending to lands and hereditaments which have been or may be taken or limited by way of mortgage, or for securing money, or by way of indemnity for the use of the ordnance service or objects connected therewith: And whereas the covenants and contracts made by and with the said principal officers, as well with respect to their estates as with respect to other matters and things relating to the service of the ordnance department, are numerous and important: And whereas many of such covenants and contracts cannot be enforced by law by the officers for the time being, who were not or may not be parties thereto, and it is expedient that the power to sue upon all manner of such covenants and contracts, as well as

upon other causes of action relating to the said service, should be vested in the officers of his Majesty's ordnance for the time being: And whereas his Majesty has been pleased to reduce the number of the principal officers of the ordnance, and it is expedient that two or more of such officers should be enabled to exercise and execute the respective powers, authorities and duties, and to perform and execute all such contracts, conveyances, leases and other deeds and instruments relating to the public service of the said department, and to do and execute all such deeds, matters and things as by any act or acts, or otherwise, might or ought to be exercised, performed, done or executed by three or more of such principal officers; be it therefore enacted," &c., "that immediately from and after the passing of this act, all messuages, buildings, lands, tenements and hereditaments in Great Britain or Ireland, of *copyhold or customary or ancient demesne tenure*, which have been heretofore purchased or taken by or in the name of any person or persons in trust for his Majesty, or his royal predecessors, and his and their heirs and successors, for the use or service of the said ordnance department, or for the use and service of the said barrack department, either in fee or for any life or lives, or otherwise howsoever, and the appurtenances to the same respectively belonging, shall be and become and continue vested in the principal officers of his Majesty's ordnance for the time being, and their successors in the said office, according to the nature and quality of and in the respective estates and interests in such hereditaments and premises, for the use and service of the said ordnance department, and upon and for such trusts, intents or purposes as are, in and by the said recited act of the first and second years of the reign of his late Majesty, expressed and declared or referred unto of and concerning the estates and property thereby vested in the said principal officers and their successors in the said office."

Sect. 2. "And be it further enacted, that all other messuages, buildings, lands, tenements and hereditaments in Great Britain or Ireland, of *copyhold or customary or ancient demesne tenure*, which shall at any time or times hereafter be purchased or taken by the principal officers of his Majesty's ordnance for the time being, or by any other person or persons by their order, or for the service of the said ordnance department, and the appurtenances to the same respectively belonging, shall be granted, surrendered, conveyed and assured unto, and shall thereupon and upon the admittance of the secretary or other person hereinafter directed to be admitted, be and become and continue vested in the principal officers of his Majesty's ordnance for the time being, and their successors in the said office, according to the nature and quality of and in the respective estates and interests in such hereditaments and premises, and without any words of limitation whatsoever, for the use and service of the said ordnance department, and upon and for such trusts, intents and purposes as aforesaid."

Sect. 3. "And be it further enacted, that all messuages, buildings, lands, tenements and hereditaments of every description, and whether in Great Britain or Ireland, which before the passing of this act shall have been taken or conveyed or surrendered and are now held by way of mortgage, or for securing any sum or sums of money for the use of the ordnance ser-

vice or barrack service, shall from and after the passing of this act be and become and continue, and all messuages, buildings, lands, tenements and hereditaments of every description, and whether in Great Britain or Ireland, which shall hereafter be taken or limited by way of mortgage, or for securing any sum or sums of money, or by way of indemnity, or for any other purpose or purposes, for the use of the ordnance service or any objects connected therewith, shall be taken and conveyed and surrendered, and shall thereupon, and when any admittance is necessary, upon any such admittance as hereinafter mentioned shall be and become and continue vested in the principal officers of his majesty's ordnance for the time being, and their successors in the said office, according to the nature and quality of and the respective estates and interests in such hereditaments and premises respectively, and without any words of limitation whatsoever, upon and for the trusts, intents and purposes to which the same are or shall be subject or made liable."

Sect. 5. " Provided always and be it further enacted, that when and as the person, or, in those cases where there shall be more than one, the survivor of the persons, in whom any messuages, buildings, lands, tenements and hereditaments of *copyhold, customary or ancient demesne tenure*, heretofore purchased or taken as aforesaid, are now respectively vested, shall die, and when any messuages, buildings, lands, tenements and hereditaments of any such tenure shall hereafter be purchased or taken as aforesaid, the secretary for the time being of the principal officers of his majesty's ordnance, or any other officer of the ordnance department, or other person whom the said principal officers, or any two or more of them, shall from time to time appoint, shall be admitted to such hereditaments and premises, except that in the case of any mortgage or security, such admittance shall be at the option of the said principal officers; and that on the death of any person filling or who shall have filled the office of such secretary, or the office of such officer as shall be so appointed, and who shall have been admitted, or of the person who shall have been admitted to any such hereditaments and premises, the secretary for the time being of the said principal officers who shall succeed or then be in office, or any other officer of the ordnance department, or other person who shall be from time to time appointed as aforesaid, (as the case may be,) shall be admitted to such hereditaments and premises; and that on the respective deaths of the person or persons in whom the hereditaments and premises hereinbefore in that behalf mentioned are now vested, and on whose death or deaths a heriot, fine or any other sum or due would be due or payable, and on the death of the secretary or other officer, or other person who shall be admitted as aforesaid, the lords and ladies of the manor of which the said premises are respectively holden, and their stewards, shall be intitled (in case no alienation shall have previously taken place) to such heriots, fines and fees, and sums of money and other dues, as shall be due and payable and of right accustomed upon the death of a tenant and the admission of a new tenant, and as they would have been intitled to in case this act had not been passed; but nevertheless that such person or persons shall only continue tenant or

tenants, and such secretary or officer or other person as aforesaid shall only be admitted, for the purpose of ascertaining and preserving to the lord or lady of the manor the right of escheat and all other rights, and for the purpose of performing such services (if any) as ought to be performed, and of determining when the heriots, fines, fees and sums of money and dues, due or payable on the death of a tenant and the admission of a new tenant, shall become due and payable; and the said hereditaments and premises, as regards the legal estate, and for all purposes of alienation and all other purposes, save as aforesaid, shall be and become and continue vested in the said principal officers for the time being."

Sect. 6. "And be it further enacted, that all the powers and authorities of selling, exchanging, letting, conveying and *surrendering*, bringing and defending actions and suits, and distraining, and all other powers and authorities whatsoever given to the said principal officers for the time being, or any three or more of them, by the said recited act of the first and second years of the reign of his late Majesty with respect to the estates and property thereby respectively vested in them respectively, shall apply to the hereditaments and premises which shall be or become vested in the said principal officers by virtue of this act, except so far as the same may be inapplicable to any hereditaments vested in them by way of mortgage or security, while the same shall continue to be so held; and all the powers and authorities of the said last mentioned act given to bodies politic or corporate and others, of contracting, and of conveying and *surrendering* lands and hereditaments, and otherwise, shall apply to messuages, lands, tenements and hereditaments of *copyhold*, *customary* and *ancient demesne tenure*, and to the purchase monies for the same; and all powers and authorities by the same act given to the barons or judges of his Majesty's Court of Exchequer relating to the purchase monies therein mentioned, and all other clauses, matters and things whatsoever therein contained relating thereto, whether arising from the sale or purchase of lands or hereditaments or otherwise howsoever, shall apply to the monies which shall arise or become payable under this act; and all other clauses, matters and things in the said recited acts or either of them contained, as far as the same shall be applicable to and not inconsistent with this act, shall apply to this act as fully and effectually to all intents and purposes as if all such powers, authorities, clauses, matters and things were respectively severally and separately repeated and re-enacted in and made part of this act."

Sect. 10. "And be it further enacted, That in all contracts of every description, and in all conveyances, *surrenders*, leases, and other deeds and instruments whatsoever relating to the public service, which from and after the passing of this act shall or may be made or entered into by, to or with the principal officers of the ordnance for the time being, or any two or more of them, or whereunto they or any two or more of them shall or may be parties, it shall be sufficient to call or describe the said principal officers by the style or title of "the principal officers of His Majesty's ordnance," without naming them or any of them; and that all such contracts, convey-

ances, surrenders, leases, and other deeds and instruments wherein the said principal officers shall be called or described by their style or title as aforesaid, and the execution thereof respectively by the said principal officers, or any two or more of them, shall be as valid and effectual, and shall have the like force and operation, to all intents and purposes whatsoever, as if the said principal officers, or any two or more of them, had been particularly named and described therein."

11 GEO. IV. & 1 WILL. IV. c. 60.

"An act for amending the laws respecting conveyances and transfers of estates and funds vested in trustees and mortgagees; and for enabling courts of equity to give effect to their decrees and orders in certain cases."

[The first sect. repeals the 6th Geo. IV. c. 74, and other acts relating to conveyances of estates vested in trustees, being infants, idiots, &c., but so that the acts repealed by the 6th Geo. IV. should not be revived.]

[The second sect. contains certain rules for the interpretation of the act, the first being that the provisions therein relating to *land* shall extend to and include any manor, messuage, tenement, hereditament, or real property, of whatever tenure.]

[The third sect. enacts, that where any trustee or mortgagee of land shall be lunatic, the Lord Chancellor may direct the committee to convey such land in such manner as he shall think proper.]

[The fifth sect. extends that power to the case of a person being lunatic, but who shall not have been found such by inquisition; and authorises the Lord Chancellor to direct any person whom he may think proper to appoint for that purpose in the place of the lunatic to convey the land.]

Sect. 6. "And be it further enacted, that where any person seized or possessed of any land upon any trust, or by way of mortgage, shall be under the age of twenty-one years, it shall be lawful for such infant, by the direction of the Court of Chancery, to convey the same to such person and in such manner as the said court shall think proper; and every such conveyance shall be as effectual as if the infant trustee or mortgagee had been, at the time of making or executing the same, of the age of twenty-one years."

Sect. 7. "And be it further enacted, that where any person seized or possessed upon any trust or by way of mortgage of any land situated within the duchy of *Lancaster*, or the counties palatine of *Chester*, *Lancaster*, and *Durham* respectively, or the principality of *Wales*, shall be under the age of twenty-one years, it shall be lawful for such infant, by the direction of the court of the Duchy Chamber of *Lancaster*, the Court of Exchequer in the county palatine of *Chester*, the Court of Chancery in the county palatine of *Lancaster*, the Court of Chancery in the county palatine of *Durham*, and the several courts of Great Session in *Wales* respectively, as to premises within the jurisdiction of the same courts respectively, to convey such lands to such person and in such manner as the said courts re-

spectively shall think proper, in like manner as such infant is hereinbefore empowered to convey the same by the direction of the Court of Chancery."

Sect. 8. "And be it further enacted, that where any person seized of any land upon any trust shall be out of the jurisdiction of or not amenable to the process of the Court of Chancery, or it shall be uncertain, where there were several trustees, which of them was the survivor, or it shall be uncertain whether the trustee last known to have been seized as aforesaid be living or dead, or, if known to be dead, it shall not be known who is his heir; or if any trustee seized as aforesaid, or the heir of any such trustee, shall neglect or refuse to convey such land for the space of twenty-eight days next after a proper deed for making such conveyance shall have been tendered for his execution by, or by any agent duly authorized by any person entitled to require the same; then and in every or any such case it shall be lawful for the said Court of Chancery to direct any person whom such court may think proper to appoint for that purpose, in the place of the trustee or heir, to convey such land to such person and in such manner as the said court shall think proper; and every such conveyance shall be as effectual as if the trustee seized as aforesaid, or his heir, had made and executed the same (*p*)."

Sect. 11. "And be it further enacted, that every direction or order to be made in pursuance of this act by the Lord Chancellor, intrusted as aforesaid, or by the Court of Chancery, or by any other court hereinbefore mentioned, shall be signified by an order to be made in any cause depending in such court respectively, or upon petition in the lunacy or matter; and such person as hereinafter is mentioned shall be the petitioner, whether such person be or be not under any legal disability, (that is to say,) if the same shall relate to a conveyance, transfer, receipt, or payment to or in such manner as may be directed by any person beneficially entitled, then upon the petition of the person or some or one of the persons beneficially entitled to the land, stock, or dividends to be conveyed, transferred, received or paid; and if the same shall relate to a conveyance in order to vest any land or stock in a new trustee, duly appointed by virtue of some power or authority in some instrument creating or declaring the trusts of such land or stock, or by the Court of Chancery, either alone or together with any continuing trustee, then upon the petition either of the trustee or some or one of the trustees in whom the same shall be proposed to be vested, or of any person having an interest therein; and if the same shall relate to the conveyance of an estate in mortgage, then upon the petition of the person or some or one of the persons entitled to the equity of redemption thereof, or of the person or some or one of the persons entitled to the monies thereby secured, or the guardian or committee or some or one of the guardians or committees of the person entitled to such monies, if an infant or lunatic."

Sect. 12. "Provided always nevertheless and be it further enacted,

(*p*) Vide *Re Dearden*, 3 Myl. & Keen. 84, 85, in notis. Vide also 4 & 5 W. 4, 508; *Ex parte Whitton*, 1 Keen, 278; Reg. c. 23, s. 2; and 1 & 2 Vict. c. 69.
v. Pitt, 2 Per. & Dav. 385; ante, pt. 1, pp.

that where, on account of the length of time which shall have elapsed since the creation or last declaration of trust, the title of the person claiming a conveyance or transfer may appear to require deliberate investigation in the presence of all parties interested, in order to prevent the vesting of the legal estate in a person who may not really be entitled to the benefit thereof; or if under other circumstances it shall appear to the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, or any other court hereinbefore mentioned, not proper to make an order upon petition; it shall be lawful for such Lord Chancellor or any such court to direct a bill to be filed to establish the right of the party seeking the conveyance or transfer; and upon the establishment by a decree of such right, by the same decree, or any order in the cause or in the lunacy, or both, to direct a conveyance or transfer to be made according to the intent of this act."

Sect. 13. "And be it further enacted, that any committee, infant or other person directed by virtue of this act to make or join in making any conveyance, or transfer, or receipt, or payment, shall and may be compelled, by the order to be obtained as hereinbefore is mentioned, to make and execute the same in like manner as trustees of full age, and of sane mind, memory and understanding are compellable to convey, transfer or receive and pay over the trust estates or funds vested in them respectively."

[The 14th section provides for the payment into the Bank of England of money payable in or towards the redemption or discharge of any mortgage or incumbrance, of which a release or conveyance shall be obtained from an infant under the powers of the act, to the account of the accountant general in any cause depending, and, if no cause, to the credit of the infant, subject to the order of the court.]

Sect. 15. "And be it further enacted, that every person, being in other respects within the meaning of this act, shall be and be deemed to be a trustee within the meaning of this act, notwithstanding he may have some beneficial estate or interest in the same subject, or may have some duty as trustee to perform; but in every such case, and in every case of a mortgagee, (not being a naked trustee,) it shall be in the discretion of the said Lord Chancellor, intrusted as aforesaid, or the said Court of Chancery, if under the circumstances it shall seem requisite, to direct a bill to be filed to establish the right of the party seeking the conveyance or transfer, and not to make the order for such conveyance or transfer unless by the decree to be made in such cause, or until after such decree shall have been made."

Sect. 16. "And be it further enacted, that where any land shall have been contracted to be sold, and the vendor or any of the vendors shall have departed this life, either having received the purchase money for the same or some part thereof, or not having received any part thereof, and a specific performance of such contract, either wholly or as far as the same remains to be executed, or as far as the same by reason of the infancy can be executed, shall have been decreed by the Court of Chancery in the lifetime of such vendor or after his decease, and where one person shall have purchased an estate in the name of another, but the nominal purchaser shall, on the face of the conveyance, appear to be the real purchaser, and there

shall be no declaration of trust from him, and a decree of the said court, either before or after the death of such nominal purchaser, shall have declared such nominal purchaser to be a trustee for the real purchaser, then and in every such case the heir of such vendor, or such nominal purchaser or his heir, in whom the premises shall be vested, shall be and be deemed to be a trustee for the purchaser within the meaning of this act."

Sect. 17. "And be it further enacted, that where any land shall have been contracted to be sold, and the vendor or any of the vendors shall have departed this life, having devised the same in settlement so as to be vested in any person for life or other limited interest, with any remainder, limitation or gift over which may not be vested, or may be vested in some person from whom a conveyance of the same cannot be obtained, or by way of executory devise, and a specific performance of such contract, either wholly or so far as the same remained to be executed, shall have been decreed by the Court of Chancery, it shall be lawful for the court by whom such decree shall be made, by the same or any other decree, or any decretal order, or upon petition in the cause, to direct any such tenant for life, or other person having a limited interest, or the first executory devisee thereof, to convey the fee simple or other the whole estate contracted to be sold to the purchaser, or in such manner as the said court shall think proper; and every such conveyance shall be as effectual as if the person who shall make the same were seized of the fee simple or other the whole estate contracted to be sold."

Sect. 18. "And be it further enacted, that the several provisions hereinbefore contained shall extend to every other case of a constructive trust, or trust arising or resulting by implication of law; but in every such case where the alleged trustee has or claims a beneficial interest adversely to the party seeking a conveyance or transfer, no order shall be made for the execution of a conveyance or transfer by such alleged trustee, until after it has been declared by the Court of Chancery, in a suit regularly instituted in such court, that such person is a trustee for the person so seeking a conveyance or transfer; but this act shall not extend to cases upon partition, or cases arising out of the doctrine of election in equity, or to a vendor, except in any case hereinbefore expressly provided for (q)."

[The 19th section provides that husbands of female trustees shall be deemed trustees within the act.]

[The 20th section enacts, that the provisions for obtaining conveyances from any person being lunatic shall extend to persons who, by force of any law for payment of debts out of real estate, would be compellable to convey if of sound mind.]

[The 21st section extends the provisions of the act to petitions in cases of charity and friendly societies.]

Sect. 22. "And whereas cases may occur, upon applications by petition under this act for a conveyance or transfer, where the recent creation or declaration of the trust, or other circumstances, may render it safe and expedient for the Lord Chancellor, intrusted as aforesaid, or the Court of

(q) Vide *Turner v. Edgell*, 1 Keen, 502.

Chancery, (as the case may require,) to direct, by an order upon such petition, a conveyance or transfer to be made to a new trustee or trustees, without compelling the parties seeking such appointment to file a bill for that purpose, although there is no power in any deed or instrument creating or declaring the trusts of such land or stock to appoint new trustees: Be it therefore further enacted, that in any such case it shall be lawful for the Lord Chancellor, intrusted as aforesaid, or the said Court of Chancery, to appoint any person to be a new trustee, by an order to be made on a petition to be presented for a conveyance or transfer under this act, after hearing all such parties as the said court shall think necessary; and thereupon a conveyance or transfer shall and may be made and executed, according to the provisions hereinbefore contained, to or so as to vest such land or stock in such new trustee, either alone or jointly with any surviving or continuing trustee, as effectually and in the same manner as if such new trustee had been appointed under a power in any instrument creating or declaring the trusts of such land or stock, or in a suit regularly instituted."

[The 26th section empowers the Court of Chancery to order the costs of petitions, conveyances, &c., to be paid and raised out of the land, or the rents, or in any other manner.]

[By the 30th section, the powers given to the Court of Chancery may be exercised by the Court of Exchequer.]

11 GEO. IV. & 1 WM. IV. c. 65.

"An act for consolidating and amending the laws relating to property belonging to infants, femmes covert, idiots, lunatics, and persons of unsound mind."

[By the 1st section, the act of 9 Geo. I. c. 29, to enable lords of manors more easily to recover their fines, and to exempt infants and femmes covert from forfeiture of their copyhold estate in particular cases; and 43 Geo. III. c. 75, to authorize the sale or mortgage of the estates of persons found lunatic by inquisition, &c.; and 59 Geo. III. c. 80, to explain the last mentioned act, &c.; and 9 Geo. IV. c. 78, for extending the two last mentioned acts, &c., are (with other acts referred to in the preamble) repealed.]

[The 2nd section contains certain rules for the interpretation of the act, and enacts that the provisions relating to *land* shall extend to and include any manor, messuage, tenement, hereditament, or real property, *of whatsoever tenure.*]

Sect. 3. "And be it further enacted, that from and after the passing of this act, where any person being under the age of twenty-one years, or being a feme covert or lunatic, is or shall be entitled by descent, or surrender to the use of a last will, *or otherwise*, to be admitted tenant of any copyhold lands, such person, in his or her own proper person, or being a feme covert by her attorney, or being an infant by his guardian or attorney, as the case may require, or being a lunatic by the committee of his estate, shall come to and appear at one of the three next courts which shall be kept (for the

keeping whereof the usual notice shall be given) for the manor whereof such land shall be parcel, and shall there offer himself or herself to the lord or his steward to be admitted tenant to the said land; to make which appearance and to take which admittance in behalf of such infant or lunatic or feme covert, such guardian, committee or attorney shall be and is hereby respectively authorized and required."

Sect. 4. "And be it further enacted, that it shall be lawful for any feme covert, and for any infant who shall have no guardian, and she and he is hereby empowered, by writing under her or his hand and seal respectively, to appoint an attorney or attornies on her or his behalf, for the purpose of appearing and taking such admittance as aforesaid."

Sect. 5. "And be it further enacted, that in default of such appearance of any infant, feme covert, or lunatic, in his or her own person, or by his or her guardian, committee or attorney in that behalf, and of acceptance of such admittance as aforesaid, it shall be lawful for the lord of every such manor, or his steward, *after such three several courts have been duly holden for such manor, and proclamations in such several courts been regularly made*, to appoint, at any subsequent court to be holden for such manor, any fit person to be attorney for every such infant, feme covert or lunatic for that purpose only, and by such attorney to admit every such infant, feme covert or lunatic, to the said land, according to such estate as such infant, feme covert or lunatic shall be legally entitled to therein, and upon every such admittance to impose and set such fine as might have been legally imposed and set if such infant had been of full age, or if such feme covert had been sole and unmarried, and if such lunatic had been of sane mind (*r*).

Sect. 6. "And be it further enacted, that upon every such admittance of any infant, feme covert or lunatic as aforesaid, the fine imposed and set thereupon shall and may be demanded by the bailiff or agent of the lord of such manor, by a note in writing, signed by the lord of such manor or by his steward, to be left with the guardian of such infant, or such infant if he have no guardian, or with such feme covert or her husband, or with the committee of the estate of such lunatic, or with the tenant or occupier of the land to which such infant, feme covert or lunatic shall have been admitted as aforesaid; and if the fine so imposed and set be not paid or tendered to such lord or his steward within three months after such demand made, then it shall be lawful for the lord of such manor to enter into and upon the copyhold land to which any such infant, feme covert or lunatic shall be so admitted, and to hold and enjoy the same, and to receive the rents, issues and profits thereof, but without liberty to fell any timber standing thereon, for so long time only and until by such rents, issues and profits such lord shall be fully paid and satisfied such fine, together with all reasonable costs and charges which such lord shall have been put unto in levying and raising the same, and in obtaining the possession of such copyhold land, although such infant, feme covert or lunatic shall happen to die

before such fine and fines, and the costs and charges aforesaid shall be raised and collected; of all which rents, issues and profits so to be received by such lord of such manor, or his steward, bailiff or servant, upon the occasion aforesaid, such lord shall yearly and every year, upon demand to be made by the person who shall be entitled to the surplus of the said rents and profits over and above what will pay and satisfy such fine and costs and charges, or by the person who shall be then entitled to such copyhold land, give and render a just and true account, and shall pay the same surplus, if any, to such person as shall be entitled to the same."

Sect. 7. "And be it further enacted, that as soon as such fine, and the costs, charges and expenses aforesaid shall be fully paid and satisfied, or if, after such seizure and entry of and upon such copyhold land for the purposes aforesaid, such fine, and the costs and charges aforesaid shall be lawfully tendered and offered to be paid and satisfied to the lord of such manor, then and in any of the said cases, it shall be lawful for such infant, feme covert, lunatic or other person entitled thereto, or the guardian of such infant, the husband of such feme covert, or the committee of such lunatic, to enter upon and take possession of and hold the said copyhold land according to the estate or interest such infant, feme covert or lunatic shall be lawfully entitled to therein, and the lord of such manor shall and is hereby required in any of the said cases to deliver possession thereof accordingly; and if such lord, after such fine, and the costs and charges aforesaid shall be fully paid and satisfied, or after the same shall have been tendered or offered to be paid as aforesaid, shall refuse to deliver the possession of the said copyhold land as aforesaid, he or they shall be liable to, and shall make satisfaction to the person or persons so kept out of possession, for all the damages that he or she shall thereby sustain, and all the costs and charges that he or she shall be put unto for the recovery thereof."

Sect. 8. "And be it further enacted, that where any infant, feme covert or lunatic shall be admitted to any copyhold land, if the guardian of such infant, or husband of such feme covert, or committee of such lunatic shall pay to the lord of any manor the fine legally imposed and set upon such admittance, and the costs and charges which such lord of such manor shall have been put unto as aforesaid, then it shall be lawful for every guardian of such infant, or husband of such feme covert, or committee of such lunatic, his executors and administrators, to enter into and to hold and enjoy the said land to which such infant, feme covert or lunatic shall have been so admitted, and receive and take the rents, issues and profits thereof to his and their own use, until thereby such guardian of such infant, or husband of such feme covert, or committee of such lunatic, his executors and administrators, shall be fully satisfied and paid all and every such sum and sums of money as he shall respectively pay and disburse upon the account aforesaid, notwithstanding the death of such infants, femes covert or lunatic shall happen before such sum or sums of money so expended shall or may be so raised and reimbursed."

Sect. 9. "Provided always and be it further enacted, That from and

after the passing of this act, no infant, feme covert or lunatic shall forfeit any copyhold land for his or her neglect or refusal to come to any court to be kept for any manor whereof such land is parcel, and to be admitted thereto, nor for the omission, denial or refusal of any such infant, feme covert or lunatic to pay any fine imposed or set upon his or her admittance to any such land."

Sect. 10. "Provided nevertheless and be it further enacted, that if the fine imposed in any of the cases hereinbefore mentioned shall not be warranted by the custom of the manor, or shall be unlawful, then such infant, feme covert or lunatic shall be at liberty to controvert the legality of such fine, in such manner as he or she might have done if this act had not been made."

Sect. 11. "And be it further enacted, that it shall be lawful for any person, not being under coverture, and for every feme covert, (such feme covert being solely and secretly examined by the lord of the manor whereof the land of which a common recovery is proposed to be suffered shall be holden by copy of court roll, or in ancient demesne or otherwise, or by his steward, or by the deputy of such steward,) to appoint *any person* to be his or her attorney, for the purpose of surrendering the land of which a common recovery shall be proposed to be suffered, to the use of any person, to make him tenant to the plaint, and also to appoint *any other person* to appear for the person so appointing, as vouchee, and to enter into the usual warranty, and to do all other lawful and necessary acts for the suffering and perfecting of such common recovery respectively, and to direct the demandant in such common recovery respectively to surrender the tenements so recovered, when or after such recovery shall be suffered and perfected, to such uses as shall be declared in the instrument by which such attorney shall be respectively appointed; and that the surrender and common recovery which shall be had, acknowledged and suffered as aforesaid, shall have the like effect, but no other, as such surrender and common recovery would have had if the party who shall acknowledge such surrender and suffer such common recovery by attorney, and give such directions as aforesaid, had appeared in court in his or her person, and acknowledged the said surrender, and suffered the same recovery, and had joined in the surrender to be made by such defendant, [demandant] (*s*)."

[N. B. The act empowers the Court of Chancery to order and direct the renewal of leases to which infants, femes covert or lunatics may be entitled; and the renewal of leases by infants &c.; and the execution of powers of leasing given to persons being lunatic, by the committees; and the grant of leases by the committees of lunatics seized in fee or in tail &c.; and the execution of agreements for leases by the guardians of infants, and the committees of lunatics; and the conveyance of land by the committees of lunatics in performance of contracts; and the sale or mortgage of the estates of lunatics for raising money for the payment of debts and incumbrances (*t*).]

(*s*) Note,—This clause is a copy of the like provision in 47 Geo. 3, s. 2, c. 8,

ante, pt. 1, p. 66, n. (*o*); ante, p. 748.

(*t*) The court has no power under this

[The 85th section empowers the Court of Chancery to order the costs of petitions, conveyances &c., to be paid and raised out of the lands or the rents, as the court may think proper.]

[By the 87th section, the powers given to the Court of Chancery may be exercised by the Court of Exchequer.]

2 & 3 WILL. IV. c. 71.

“ An act for shortening the time of prescription in certain cases.”

“ Whereas the expression ‘ time immemorial, or time whereof the memory of man runneth not to the contrary,’ is now by the law of England in many cases considered to include and denote the whole period of time from the reign of King Richard the First, whereby the title to matters that have been long enjoyed is sometimes defeated by showing the commencement of such enjoyment, which is in many cases productive of inconvenience and injustice,” for remedy thereof be it enacted by &c., “ That no claim which may be lawfully made at the common law, by custom, prescription or grant to any right of common or other profit or benefit to be taken and enjoyed from or upon any land of our sovereign lord the king, his heirs or successors, or any land being parcel of the duchy of Lancaster or of the duchy of Cornwall, or of any ecclesiastical or lay person, or body corporate, except such matters and things as are herein specially provided for, and except tithes, rent and services, shall, where such right, profit or benefit shall have been actually taken and enjoyed by any person claiming right thereto without interruption for the full period of thirty years, be defeated or destroyed by showing only that such right, profit or benefit was first taken or enjoyed at any time prior to such period of thirty years, but nevertheless such claim may be defeated in any other way by which the same is now liable to be defeated; and when such right, profit or benefit shall have been so taken and enjoyed as aforesaid for the full period of sixty years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was taken and enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing.”

Sect. 2. “ And be it further enacted, that no claim which may be lawfully made at the common law, by custom, prescription or grant, to any way or other easement, or to any watercourse, or the use of any water, to be enjoyed or derived upon, over or from any land or water of our said lord the king, his heirs or successors, or being parcel of the duchy of Lancaster or of the duchy of Cornwall, or being the property of any ecclesiastical or lay person, or body corporate, when such way or other matter as herein last before mentioned shall have been actually enjoyed by any person claiming right thereto without interruption for the full period of twenty

act, or the 3 & 4 Will. 4, c. 74, to authorize the committee of a lunatic tenant in tail in possession to grant leases for

twenty-one years, so as to bind the remainder-men; *Re Starkie, Ex parte Clayton*, 3 Myl. & Keen, 247.

years, shall be defeated or destroyed by showing only that such way or other matter was first enjoyed at any time prior to such period of twenty years, but nevertheless such claim may be defeated in any other way by which the same is now liable to be defeated ; and where such way or other matter as herein last before mentioned shall have been so enjoyed as aforesaid for the full period of forty years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing."

Sect. 3. " And be it further enacted, that when the access and use of light to and for any dwelling house, workshop, or other building shall have been actually enjoyed therewith for the full period of twenty years without interruption, the right thereto shall be deemed absolute and indefeasible, any local usage or custom to the contrary notwithstanding, unless it shall appear that the same was enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing."

Sect. 4. " And be it further enacted, that each of the respective periods of years hereinbefore mentioned shall be deemed and taken to be the period next before some suit or action wherein the claim or matter to which such period may relate shall have been or shall be brought into question ; and that no act or other matter shall be deemed to be an interruption within the meaning of this statute, unless the same shall have been or shall be submitted to or acquiesced in for one year after the party interrupted shall have had or shall have notice thereof, and of the person making or authorizing the same to be made."

Sect. 5. " And be it further enacted, that in all actions upon the case and other pleadings, wherein the party claiming may now by law allege his right generally, without averring the existence of such right from time immemorial, such general allegation shall still be deemed sufficient, and if the same shall be denied, all and every the matters in this act mentioned and provided, which shall be applicable to the case, shall be admissible in evidence to sustain or rebut such allegation ; and that in all pleadings to actions of trespass, and in all other pleadings wherein before the passing of this act it would have been necessary to allege the right to have existed from time immemorial, it shall be sufficient to allege the enjoyment thereof as of right by the occupiers of the tenement in respect whereof the same is claimed, for and during such of the periods mentioned in this act as may be applicable to the case, and without claiming in the name or right of the owner of the fee, as is now usually done ; and if the other party shall intend to rely on any proviso, exception, incapacity, disability, contract, agreement, or other matter hereinbefore mentioned, or on any cause or matter of fact or of law not inconsistent with the simple fact of enjoyment, the same shall be specially alleged and set forth in answer to the allegation of the party claiming, and shall not be received in evidence on any general traverse or denial of such allegation."

Sect. 6. " And be it further enacted, that in the several cases mentioned in and provided for by this act, no presumption shall be allowed or made

in favour or support of any claim, upon proof of the exercise or enjoyment of the right or matter claimed for any less period of time or number of years than for such period or number mentioned in this act as may be applicable to the case and to the nature of the claim."

Sect. 7. " Provided also, that the time during which any person otherwise capable of resisting any claim to any of the matters before mentioned shall have been or shall be an infant, idiot, non compos mentis, feme covert, or tenant for life, or during which any action or suit shall have been pending, and which shall have been diligently prosecuted, until abated by the death of any party or parties thereto, shall be excluded in the computation of the periods hereinbefore mentioned, except only in cases where the right or claim is hereby declared to be absolute and indefeasible."

Sect. 8. " Provided always and be it further enacted, that when any land or water, upon, over or from which any such way or other convenient watercourse or use of water shall have been or shall be enjoyed or derived, hath been or shall be held under or by virtue of any term of life, or any term of years exceeding three years from the granting thereof, the time of the enjoyment of any such way or other matter as herein last before mentioned, during the continuance of such term, shall be excluded in the computation of the said period of forty years, in case the claim shall within three years next after the end or sooner determination of such term be resisted by any person entitled to any reversion expectant on the determination thereof."

[The 9th sect. excludes Scotland and Ireland from the provisions of the act.]

2 & 3 W. IV. c. 80.

" An Act to authorize the identifying of Lands and other Possessions of certain Ecclesiastical and Collegiate Corporations (u). "

" Whereas the archbishops and bishops of the several dioceses, and the deans, and deans and chapters, archdeacons, prebendaries, and canons, and other dignitaries and officers of the several cathedral and collegiate churches and chapels, and the masters or other heads, and fellows and scholars or other societies of the several colleges and halls in the universities of *Oxford* and *Cambridge*, and of the colleges of *Winchester* and *Eton*, are proprietors of divers manors, messuages, lands, tenements, tithes and hereditaments, and in many cases the boundaries or quantities and the identity of lands within such manors, and of such messuages, lands, tenements, and hereditaments, and of lands subject to any such tithes, or some part or parts thereof, are unknown or disputed, and it would be a great benefit, as well to such proprietors respectively, as to their lessees, copyhold or customary tenants, sub-lessees or under-tenants, their, his, or

(u) The provisions of this statute are embodied in the Commutation and Enfranchisement Act, 4 & 5 Vict. c. 35, s. 21, post.

her heirs, executors, administrators or assigns, if the said manors, messuages, lands, tenements, tithes and hereditaments were identified, and the boundaries and quantities thereof ascertained and finally settled: be it enacted by," &c. "That from and after the passing of this act, it shall, and may be lawful to and for any archbishop, bishop, dean, dean and chapter, or other corporation aggregate or sole hereinbefore mentioned, to enter into an agreement of reference or deed of submission with his or their lessee or lessees, copyhold or customary tenant or tenants, sub-lessee or sub-lessees, under-tenant or under-tenants, his, her, or their heirs, executors, administrators or assigns, or with the owner or owners of any other hereditaments adjoining to or intermixed with the said manors, messuages, lands, tenements, tithes or hereditaments, whereby it shall be agreed that any unknown or disputed boundaries or quantities of such manors, messuages, lands, tenements, tithes or hereditaments, or any part thereof, shall be referred to the adjudication of such person or persons as may be agreed upon and named by the said archbishop, bishop, dean, dean and chapter, or other corporation aggregate or sole, and by his or their lessee or lessees, copyhold or customary tenant or tenants, sub-lessee or sub-lessees, under-tenant or under-tenants, his, her, or their heirs, executors, administrators or assigns, or by such owner or owners of any other hereditaments situate as aforesaid; and that such referee or referees shall be fully authorized to make or cause to be made surveys, maps, and admeasurements of the said manors, messuages, lands, tenements, tithes and hereditaments, or any part thereof, and to summon any persons as witnesses, and examine them on oath (which oath he or they are hereby authorized to administer) touching or concerning any of the matters or things so referred as aforesaid, or in any way relating thereto; and also to call for the production of all surveys, maps, deeds, books, papers and writings in the custody or power of any of the parties to the said reference, or of any other person or persons, of or concerning the matters in question; and the said referee or referees, having well and sufficiently investigated and considered the same, and all matters to him or them referred, shall and may make his or their award or awards in writing, under his or their hand and seal or hands and seals, with a map or maps drawn thereupon or thereunto annexed, and which said award or awards and map or maps shall be upon parchment or vellum, and shall award and determine, identify, delineate, and describe the boundaries, quantities, particulars and situations of the said manors, messuages, lands, tenements, tithes and hereditaments so referred to him or them as aforesaid; and the said award or awards and map or maps shall be laid before all the parties to any such agreement of reference or deed of submission, including the party or parties whose consent is required by this act, whose approbation thereof shall be written upon the said award or awards, and shall be signed and sealed by them, and thereupon the said award or awards and map or maps shall be for ever afterwards binding upon all parties, and final and conclusive as to all matters therein contained or thereby referred to."

Sect. 2. “ Provided always and be it further enacted, that in every case in which any of the powers hereinbefore contained shall be exercised by any bishop, dean, archdeacon, prebendary, or other ecclesiastical corporation sole, the deed of submission or agreement of reference, and also the approbation of the award, shall, in the case of a bishop, be executed by the archbishop of the province testifying his consent thereto ; or in case of a dean, the same shall be executed by the dean and chapter testifying their consent thereto ; or in the case of an archdeacon, prebendary, or other ecclesiastical corporation sole, the same shall be executed by the archbishop or bishop of the diocese testifying his consent thereto.”

Sect. 3. “ And be it further enacted, that from and after the passing of this act, it shall and may be lawful to and for the said lessee or lessees, copyhold or customary tenant or tenants, sub-lessee or sub-lessees, under-tenant or under-tenants, and such other owner or owners as hereinbefore named, his, her or their heirs, executors, administrators or assigns, who at the time of making any reference authorized by this act shall be tenant or tenants in fee-tail, general or special, or for life or lives, and for the guardians, husbands, committees or attornies of or acting for any such lessee or lessees, copyhold or customary tenant or tenants, sub-lessee or sub-lessees, under-tenant or under-tenants, and such other owner or owners as hereinbefore named, his, her or their heirs, executors, administrators or assigns, who at the time of making any such reference shall be respectively an infant or infants, feme covert or femmes covert, or of unsound mind, or beyond the seas, or under any other legal disability, or otherwise disabled to act for themselves, himself or herself, to sign, seal and deliver any agreement of reference or deed of submission or approbation of any award or awards and map or maps authorized by this act to be made, as fully and effectually to all intents and purposes as if such lessee or lessees, copyhold or customary tenant or tenants, sub-lessee or sub-lessees, under-tenant or under-tenants, and such other owner or owners as hereinbefore named, his, her or their heirs, executors, administrators or assigns, had been tenant or tenants in fee simple, and of full age, sole, of sound mind, or within the realm of England, and not under any other legal disability.”

Sect. 4. “ And be it further enacted, that immediately after the execution by the parties of the instrument showing their approbation of any award to be made by virtue of this act, the agreement of reference or deed of submission, and also the award or awards and map or maps authorized to be made by this act, and a copy of the minutes of evidence whereupon the same is made, shall be deposited, in the case of any reference by any archbishop or bishop, in the office of their own registrar ; and in case of any reference by any dean, dean and chapter, archdeacon, prebendary, canon and other dignitary and officer of a cathedral or collegiate church or chapel, in the office of the registrar of the dean and chapter thereof ; and in case of any reference by any masters or other heads, or by any fellows and scholars, or other societies hereinbefore named, in the office of the steward or other proper officer of their said colleges and halls ; and every such registrar,

steward or other officer, or some person or persons on his behalf, shall produce the documents and papers so deposited with him, or any of them, at all proper and usual hours of business, to every person interested in the subject-matter of such award, or to his or her agent duly authorized, who shall make application to inspect the same or any of them, and shall furnish a copy or copies of the same or any of them to every such person or agent who shall make application for such copy or copies; and every such registrar, steward or other officer shall in every case be intitled to the sum of five shillings and no more for receiving and preserving the agreement of reference or deed of submission, award or awards, map or maps, and copy of the minutes of evidence as aforesaid; and the sum of one shilling and no more for every production of the same or any of them to be inspected; and the sum of sixpence and no more for every folio containing seventy-two words of every copy; and the sum of ten shillings and no more for every copy of a map so made as aforesaid."

Sect. 5. "And be it further enacted, that the expenses attending every reference which shall be made under the authority of this act, and all the proceedings hereby required relating to the same, shall be paid and borne by the parties thereto in such manner, shares and proportions as they shall agree; and in case the said parties shall not make any agreement relating to such expenses, then all such expenses, or so much thereof as shall not be provided for by such agreement, shall be paid and borne by the said parties in equal moieties."

Sect. 6. "Provided also and be it further enacted, that this act shall extend only to that part of the united kingdom called England and Wales."

3 & 4 WILL. IV. c. 27.

"An act for the limitation of actions and suits relating to real property, and for simplifying the remedies for trying the rights thereto."

Be it enacted by &c., "that the words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this act, except where the nature of the provision or the context of the act shall exclude such construction, be interpreted as follows, (that is to say,) the word 'land' shall extend to manors, messuages and all other corporeal hereditaments whatsoever, and also to tithes (other than tithes belonging to a spiritual or eleemosynary corporation sole), and also to any share, estate or interest in them or any of them, whether the same shall be a freehold or chattel interest, and whether freehold or copyhold, or held according to any other tenure; and the word 'rent' shall extend to all heriots, and to all services and suits for which a distress may be made, and to all annuities and periodical sums of money charged upon or payable out of any land (except moduses or compositions belonging to a spiritual or eleemosynary corporation sole); and the person through whom another person is said to claim shall mean any person by, through or under, or by the act of whom the person so claiming became entitled to the estate or

interest claimed, as heir, issue in tail, tenant by the curtesy of England, tenant in dower, successor, special or general occupant, executor, administrator, legatee, husband, assignee, appointee, devisee or otherwise, and also any person who was entitled to an estate or interest to which the person so claiming, or some person through whom he claims, became entitled as lord by escheat; and the word 'person' shall extend to a body politic, corporate or collegiate, and to a class of creditors or other persons as well as an individual; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and every word importing the masculine gender only shall extend and be applied to a female as well as a male."

Sect. 2. "And be it further enacted, that after the 31st day of December, 1833, no person shall make an entry or distress, or bring an action to recover any land or rent, but within twenty years next after the time at which the right to make such entry or distress or to bring such action shall have first accrued to some person through whom he claims; or if such right shall not have accrued to any person through whom he claims, then within twenty years next after the time at which the right to make such entry or distress or to bring such action shall have first accrued to the person making or bringing the same."

Sect. 3. "And be it further enacted, that in the construction of this act, the right to make an entry or distress or bring an action to recover any land or rent shall be deemed to have first accrued at such time as hereinafter is mentioned, (that is to say,) when the person claiming such land or rent, or some person through whom he claims, shall, in respect of the estate or interest claimed, have been in possession or in receipt of the profits of such land, or in the receipt of such rent, and shall while entitled thereto have been dispossessed or have discontinued such possession or receipt, then such right shall be deemed to have first accrued at the time of such disposition or discontinuance of possession, or at the last time at which any such profits or rent were or was so received; and when the person claiming such land or rent shall claim the estate or interest of some deceased person who shall have continued in such possession or receipt in respect of the same estate or interest until the time of his death, and shall have been the last person entitled to such estate or interest who shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time of such death; and when the person claiming such land or rent shall claim in respect of an estate or interest in possession granted, appointed, or otherwise assured by any instrument (other than a will) to him, or some person through whom he claims, by a person being in respect of the same estate or interest in the possession or receipt of the profits of the land, or in the receipt of the rent, and no person entitled under such instrument shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time at which the person claiming as aforesaid, or the person through whom he claims, became entitled to such possession or receipt by virtue of such instrument; and when the estate or interest claimed shall have been an estate or interest

in reversion or remainder, or other future estate or interest, and no person shall have obtained the possession or receipt of the profits of such land or the receipt of such rent in respect of such estate or interest, then such right shall be deemed to have first accrued at the time at which such estate or interest became an estate or interest in possession; and when the person claiming such land or rent, or the person through whom he claims, shall have become entitled by reason of any forfeiture or breach of condition, then such right shall be deemed to have first accrued when such forfeiture was incurred, or such condition was broken."

Sect. 4. "Provided always, that when any right to make an entry or distress or to bring an action to recover any land or rent by reason of any forfeiture or breach of condition shall have first accrued in respect of any estate or interest in reversion or remainder, and the land or rent shall not have been recovered by virtue of such right, the right to make an entry or distress, or bring an action to recover such land or rent, shall be deemed to have first accrued in respect of such estate or interest at the time when the same shall have become an estate or interest in possession, as if no such forfeiture or breach of condition had happened."

Sect. 5. "Provided also, that a right to make an entry or distress or to bring an action to recover any land or rent shall be deemed to have first accrued, in respect of an estate or interest in reversion, at the time at which the same shall have become an estate or interest in possession by the determination of any estate or estates in respect of which such land shall have been held, or the profits thereof or such rent shall have been received, notwithstanding the person claiming such land, or some person through whom he claims, shall, at any time previously to the creation of the estate or estates which shall have determined, have been in possession or receipt of the profits of such land, or in receipt of such rent."

Sect. 6. "And be it further enacted, that for the purposes of this act, an administrator claiming the estate or interest of the deceased person of whose chattels he shall be appointed administrator, shall be deemed to claim as if there had been no interval of time between the death of such deceased person and the grant of the letters of administration."

Sect. 7. "And be it further enacted, that when any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent, as tenant at will, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress or bring an action to recover such land or rent, shall be deemed to have first accrued either at the determination of such tenancy, or at the expiration of one year next after the commencement of such tenancy, at which time such tenancy shall be deemed to have determined: Provided always, that no mortgagor or cestui que trust shall be deemed to be a tenant at will, within the meaning of this clause, to his mortgagee or trustee (u)."

Sect. 8. "And be it further enacted, that when any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent, as tenant from year to year or other period, without any lease in writing, the right of the person entitled subject thereto, or of the person through

(u) Vide *Doe d. Evans v. Page*, 5 Ad. & El. (N. S.) 767.

whom he claims, to make an entry or distress or to bring an action to recover such land or rent, shall be deemed to have first accrued at the determination of the first of such years or other periods, or at the last time when any rent payable in respect of such tenancy shall have been received (which shall last happen)."

Sect. 9. "And be it further enacted, that when any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent, by virtue of a lease in writing, by which a rent amounting to the yearly sum of twenty shillings or upwards shall be reserved, and the rent reserved by such lease shall have been received by some person wrongfully claiming to be entitled to such land or rent in reversion immediately expectant on the determination of such lease, and no payment in respect of the rent reserved by such lease shall afterwards have been made to the person rightfully entitled thereto, the right of the person entitled to such land or rent, subject to such lease, or of the person through whom he claims, to make an entry or distress or to bring an action after the determination of such lease, shall be deemed to have first accrued at the time at which the rent reserved by such lease was first so received by the person wrongfully claiming as aforesaid; and no such right shall be deemed to have first accrued upon the determination of such lease to the person rightfully entitled."

Sect. 10. "And be it further enacted, that no person shall be deemed to have been in possession of any land within the meaning of this act merely by reason of having made an entry thereon."

Sect. 11. "And be it further enacted, that no continual or other claim upon or near any land shall preserve any right of making an entry or distress or of bringing an action."

Sect. 12. "And be it further enacted, that when any one or more of several persons entitled to any land or rent as coparceners, joint tenants or tenants in common, shall have been in possession or receipt of the entirety, or more than his or their undivided share or shares of such land or of the profits thereof, or of such rent, for his or their own benefit, or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same land or rent, such possession or receipt shall not be deemed to have been the possession or receipt of or by such last-mentioned person or persons or any of them (x)."

Sect. 13. "And be it further enacted, that when a younger brother or other relation of the person entitled as heir to the possession or receipt of the profits of any land, or to the receipt of any rent, shall enter into the possession or receipt thereof, such possession or receipt shall not be deemed to be the possession or receipt of or by the person entitled as heir."

Sect. 14. "Provided always and be it further enacted, that when any acknowledgment of the title of the person entitled to any land or rent shall have been given to him or his agent in writing signed by the person in possession or in receipt of the profits of such land, or in receipt of such rent, then such possession or receipt of or by the person by whom such acknowledgment shall have been given shall be deemed, according to the

(x) Vide *Culley v. Doe d. Taylerson*, 11 Ad. & El. 1008.

meaning of this act, to have been the possession or receipt of or by the person to whom or to whose agent such acknowledgment shall have been given at the time of giving the same, and the right of such last-mentioned person, or any person claiming through him, to make an entry or distress or bring an action to recover such land or rent, shall be deemed to have first accrued at and not before the time at which such acknowledgment, or the last of such acknowledgments if more than one, was given."

Sect. 15. "Provided also and be it further enacted, that when no such acknowledgment as aforesaid shall have been given before the passing of this act, and the possession or receipt of the profits of the land, or the receipt of the rent, shall not at the time of the passing of this act have been adverse (*y*) to the right or title of the person claiming to be entitled thereto, then such person, or the person claiming through him, may, notwithstanding the period of twenty years hereinbefore limited shall have expired, make an entry or distress or bring an action to recover such land or interest at any time within five years next after the passing of this act (*z*)."

Sect. 16. "Provided always and be it further enacted, that if at the time at which the right of any person to make an entry or distress or bring an action to recover any land or rent shall have first accrued as aforesaid such person shall have been under any of the disabilities hereinafter mentioned, (that is to say,) infancy, coverture, idiotcy, lunacy, unsoundness of mind, or absence beyond the seas, then such person, or the person claiming through him, may, notwithstanding the period of twenty years hereinbefore limited shall have expired, make an entry or distress or bring an action to recover such land or rent at any time within ten years next after the time at which the person to whom such right shall first have accrued as aforesaid shall have ceased to be under any such disability, or shall have died (which shall have first happened)."

Sect. 17. "Provided nevertheless and be it further enacted, that no entry, distress or action shall be made or brought by any person who, at the time at which his right to make an entry or distress or to bring an action to recover any land or rent shall have first accrued, shall be under any of the disabilities hereinbefore mentioned, or by any person claiming through him, but within forty years next after the time at which such right shall have first accrued, although the person under disability at such time may have remained under one or more of such disabilities during the whole of such forty years (*a*), or although the term of ten years from the time at which he shall have ceased to be under any such disability, or have died, shall not have expired (*b*)."

(*y*) Vide *Nepean, Bart. v. Doe d. Knight*, Ex. Ch. Tr. Term, 7 Will. 4, 2 Mee. & Wel. 894, deciding that the doctrine of non-adverse possession is done away with by the 2d and 3rd sections of this act, except in cases falling within the present section, so that an ejectment must be brought within twenty years after the right of entry accrued, whatever be the

nature of the defendant's possession; ante, pt. 1, p. 553. And see 19 Car. 2, c. 6, and n. (*f*), ante, 914.

(*z*) Vide *Doe d. Jones v. Williams*, 5 Ad. & Ell. 291; *Doe d. Burgess and Harrison v. Thompson*, *ibid.* 532.

(*a*) See the case of *Doe d. Corbyn v. Bramston*, 3 Adol. & Ell. 63.

(*b*) It has been decided that this act

Sect. 18. "Provided always and be it further enacted, that when any person shall be under any of the disabilities hereinbefore mentioned at the time at which his right to make an entry or distress or to bring an action to recover any land or rent shall have first accrued, and shall depart this life without having ceased to be under any such disability, no time to make an entry or distress or to bring an action to recover such land or rent beyond the said period of twenty years next after the right of such person to make an entry or distress or to bring an action to recover such land or rent shall have first accrued, or the said period of ten years next after the time at which such person shall have died, shall be allowed by reason of any disability of any other person."

Sect. 19. "And be it further enacted, that no part of the United Kingdom of Great Britain and Ireland, nor the islands of Man, Guernsey, Jersey, Alderney or Sark, nor any island adjacent to any of them (being part of the dominions of his majesty), shall be deemed to be beyond seas within the meaning of this act."

Sect. 20. "And be it further enacted, that when the right of any person to make an entry or distress, or bring an action to recover any land or rent to which he may have been entitled for an estate or interest in possession, shall have been barred by the determination of the period hereinbefore limited, which shall be applicable in such case, and such person shall at any time during the said period have been entitled to any other estate, interest, right or possibility, in reversion, remainder or otherwise, in or to the same land or rent, no entry, distress or action shall be made or brought by such person, or any person claiming through him, to recover such land or rent, in respect of such other estate, interest, right or possibility, unless in the meantime such land or rent shall have been recovered by some person entitled to an estate, interest or right which shall have been limited or taken effect after or in defeasance of such estate or interest in possession."

Sect. 21. "And be it further enacted, that when the right of a tenant in tail of any land or rent to make an entry or distress or to bring an action to recover the same shall have been barred by reason of the same not having been made or brought within the period hereinbefore limited, which shall be applicable in such case, no such entry, distress or action shall be made or brought by any person claiming any estate, interest or right which such tenant in tail might lawfully have barred."

Sect. 22. "And be it further enacted, that when a tenant in tail of any land or rent, entitled to recover the same, shall have died before the expiration of the period hereinbefore limited, which shall be applicable in such case, for making an entry or distress or bringing an action to recover such land or rent, no person claiming any estate, interest or right which such tenant in tail might lawfully have barred shall make an entry or distress or bring an action to recover such land or rent but within the period during which, if such tenant in tail had so long continued to live, he might have made such entry or distress or brought such action."

Sect. 23. "And be it further enacted, that when a tenant in tail of any

does not introduce any new rule with reference to the period for which the title to property is to be given; *Cooper v. Emery*, 1 Phil. 388.

land or rent shall have made an assurance thereof, which shall not operate to bar an estate or estates to take effect after or in defeasance of his estate tail, and any person shall by virtue of such assurance, at the time of the execution thereof, or at any time afterwards, be in possession or receipt of the profits of such land, or in the receipt of such rent, and the same person or any other person whatsoever (other than some person entitled to such possession or receipt in respect of an estate which shall have taken effect after or in defeasance of the estate tail), shall continue or be in such possession or receipt for the period of twenty years next after the commencement of the time at which such assurance, if it had then been executed by such tenant in tail or the person who would have been entitled to his estate tail if such assurance had not been executed, would, without the consent of any other person, have operated to bar such estate or estates as aforesaid, then at the expiration of such period of twenty years such assurance shall be and be deemed to have been effectual as against any person claiming any estate, interest or right to take effect after or in defeasance of such estate tail."

Sect. 24. "And be it further enacted, that after the said 31st day of December, 1833, no person claiming any land or rent in equity shall bring any suit to recover the same but within the period during which by virtue of the provisions hereinbefore contained he might have made an entry or distress or brought an action to recover the same respectively if he had been entitled at law to such estate, interest or right in or to the same as he shall claim therein in equity."

Sect. 25. "Provided always and be it further enacted, that when any land or rent shall be vested in a trustee upon any express trust, the right of the cestui que trust, or any person claiming through him, to bring a suit against the trustee or any person claiming through him, to recover such land or rent, shall be deemed to have first accrued, according to the meaning of this act, at and not before the time at which such land or rent shall have been conveyed to a purchaser for a valuable consideration, and shall then be deemed to have accrued only as against such purchaser, and any person claiming through him (c)."

Sect. 26. "And be it further enacted, that in every case of a concealed fraud, the right of any person to bring a suit in equity for the recovery of any land or rent of which he, or any person through whom he claims, may have been deprived by such fraud, shall be deemed to have first accrued at and not before the time at which such fraud shall or with reasonable diligence might have been first known or discovered; provided that nothing in this clause contained shall enable any owner of lands or rents to have a suit in equity for the recovery of such lands or rents, or for setting aside any conveyance of such lands or rents, on account of fraud, against any *bonâ fide* purchaser for valuable consideration who has not assisted in the commission of such fraud, and who at the time that he made the purchase did not know and had no reason to believe that any such fraud had been committed."

Sect. 27. "Provided always and be it further enacted, that nothing in this act contained shall be deemed to interfere with any rule or jurisdiction

(c) Vide *Att-Gen. v. Flint*, 4 Hare, 147; *Young v. Lord Waterpark*, 13 Sim. 204.

of courts of equity in refusing relief on the ground of acquiescence or otherwise to any person whose right to bring a suit may not be barred by virtue of this act."

Sect. 28. "And be it further enacted, that when a mortgagee shall have obtained the possession or receipt of the profits of any land, or the receipt of any rent comprised in his mortgage, the mortgagor or any person claiming through him shall not bring a suit to redeem the mortgage but within twenty years next after the time at which the mortgagee obtained such possession or receipt, unless in the meantime an acknowledgment of the title of the mortgagor, or of his right of redemption shall have been given to the mortgagor, or some person claiming his estate, or to the agent of such mortgagor or person, in writing signed by the mortgagee or the person claiming through him; and in such case no such suit shall be brought but within twenty years next after the time at which such acknowledgment, or the last of such acknowledgments if more than one, was given; and when there shall be more than one mortgagor, or more than one person claiming through the mortgagor or mortgagors, such acknowledgment, if given to any of such mortgagors or persons, or his or their agent, shall be as effectual as if the same had been given to all such mortgagors or persons; but where there shall be more than one mortgagee, or more than one person claiming the estate or interest of the mortgagee or mortgagees, such acknowledgment, signed by one or more of such mortgagees or persons, shall be effectual only as against the party or parties signing as aforesaid, and the person or persons claiming any part of the mortgage money, or land or rent by, from, or under him or them, and any person or persons entitled to any estate or estates, interest or interests, to take effect after or in defeasance of his or their estate or estates, interest or interests, and shall not operate to give to the mortgagor or mortgagors a right to redeem the mortgage as against the person or persons entitled to any other undivided or divided part of the money or land or rent; and where such of the mortgagees or persons aforesaid as shall have given such acknowledgment shall be entitled to a divided part of the land or rent comprised in the mortgage, or some estate or interest therein, and not to any ascertained part of the mortgage money, the mortgagor or mortgagors shall be entitled to redeem the same divided part of the land or rent, on payment, with interest, of the part of the mortgage money which shall bear the same proportion to the whole of the mortgage money as the value of such divided part of the land or rent shall bear to the value of the whole of the land or rent comprised in the mortgage (*d*)."

Sect. 29. "Provided always and be it further enacted, that it shall be lawful for any archbishop, bishop, dean, prebendary, parson, vicar, master of hospital, or other spiritual or eleemosynary corporation sole, to make an entry or distress or to bring an action or suit to recover any land or rent within such period as hereinafter is mentioned next after the time at which the right of such corporation sole, or of his predecessor, to make such entry or distress, or bring such action or suit shall first have accrued, (that is to say,) the period during which two persons in succession shall have held

(*d*) Vide extract from 7 W. 4 & 1 Vict. 2 Hare, 530.
c. 28, post; et vide *Hyde v. Dallaway*,

the office or benefice in respect whereof such land or rent shall be claimed, and six years after a third person shall have been appointed thereto, if the times of such two incumbencies and such term of six years taken together shall amount to the full period of sixty years; and if such times taken together shall not amount to the full period of sixty years, then during such further number of years in addition to such six years as will, with the time of the holding of such two persons and such six years, make up the full period of sixty years; and after the said 31st day of December, 1833, no such entry, distress, action or suit shall be made or brought at any time beyond the determination of such period."

Sect. 30. "And be it further enacted, that after the said 31st day of December, 1833, no person shall bring any quare impedit, or other action or any suit to enforce a right to present to or bestow any church, vicarage, or other ecclesiastical benefice, as the patron thereof, after the expiration of such period as hereinafter is mentioned, (that is to say,) the period during which three clerks in succession shall have held the same, all of whom shall have obtained possession thereof adversely to the right of presentation or gift of such person, or of some person through whom he claims, if the times of such incumbencies taken together shall amount to the full period of sixty years; and if the times of such incumbencies shall not together amount to the full period of sixty years, then after the expiration of such further time as with the times of such incumbencies will make up the full period of sixty years."

Sect. 31. "Provided always and be it further enacted, that when on the avoidance, after a clerk shall have obtained possession of an ecclesiastical benefice adversely to the right of presentation or gift of the patron thereof, a clerk shall be presented or collated thereto by his majesty or the ordinary by reason of a lapse, such lastmentioned clerk shall be deemed to have obtained possession adversely to the right of presentation or gift of such patron as aforesaid; but when a clerk shall have been presented by his majesty upon the avoidance of a benefice in consequence of the incumbent thereof having been made a bishop, the incumbency of such clerk shall, for the purposes of this act, be deemed a continuation of the incumbency of the clerk so made bishop."

Sect. 32. "And be it further enacted, that in the construction of this act every person claiming a right to present to or bestow any ecclesiastical benefice, as patron thereof, by virtue of any estate, interest or right which the owner of an estate tail in the advowson might have barred, shall be deemed to be a person claiming through the person entitled to such estate tail, and the right to bring any quare impedit, action or suit shall be limited accordingly."

Sect. 33. "Provided always and be it further enacted, that after the said 31st day of December, 1833, no person shall bring any quare impedit, or other action or any suit to enforce a right to present to or bestow any ecclesiastical benefice, as the patron thereof, after the expiration of 100 years from the time at which a clerk shall have obtained possession of such benefice adversely to the right of presentation or gift of such person, or of some person through whom he claims, or of some person entitled to some pre-

ceding estate or interest, or undivided share, or alternate right of presentation or gift, held or derived under the same title, unless a clerk shall subsequently have obtained possession of such benefice on the presentation or gift of the person so claiming, or of some person through whom he claims, or of some other person entitled in respect of an estate, share or right held or derived under the same title."

Sect. 34. "And be it further enacted, that at the determination of the period limited by this act to any person for making an entry or distress, or bringing any writ of quare impedit, or other action or suit, the right and title of such person to the land, rent or advowson for the recovery whereof such entry, distress, action or suit respectively might have been made or brought within such period, shall be extinguished."

Sect. 35. "And be it further enacted, that the receipt of the rent payable by any tenant from year to year, or other lessee, shall, as against such lessee or any person claiming under him (but subject to the lease), be deemed to be the receipt of the profits of the land for the purposes of this act."

Sect. 36. "And be it further enacted, that no writ of right patent, writ of right quia dominus remisit curiam, writ of right in capite, writ of right in London, writ of right close, writ of right de rationabili parte, writ of right of advowson, writ of right upon disclaimer, writ de rationabilibus divisis, writ of right of ward, writ de consuetudinibus et servitiis, writ of cessavit, writ of escheat, writ of quo jure, writ of secta ad molendinum, writ de essendo quietum de theolonio, writ of ne injuste vexes, writ of mesne, writ of quod permittat, writ of formedon in descender, in remainder, or in reverter, writ of assize of novel disseisin, nuisance, darrein-presentment, juris utrum, or mort d'ancestor, writ of entry sur disseisin, in the quibus, in the per, in the per and cui, or in the post, writ of entry sur intrusion, writ of entry sur alienation dum fuit non compos mentis, dum fuit infra ætatem, dum fuit in priona, ad communem legem, in casu proviso, in consimili casu, cui in vita, sur cui in vita, cui ante divortium, or sur cui ante divortium, writ of entry sur abatement, writ of entry quare ejecit infra terminum, or ad terminum qui præteriit, or causa matrimonii prælocuti, writ of aiel, besaiel, tresaiel, cosinage, or nuper obiit, writ of waste, writ of partition, writ of disceit, writ of quod ei deforceat, writ of covenant real, writ of warrantia chartæ, writ of curia claudenda, or writ per quæ servitia, and no other action real or mixed, (except a writ of right of dower, or writ of dower unde nihil habet, or a quare impedit, or an ejectment,) and no plaint in the nature of any such writ or action, (except a plaint for freebench or dower,) shall be brought after the 31st day of December, 1834."

Sect. 37. "Provided always and be it further enacted, that when, on the said 31st day of December, 1834, any person who shall not have a right of entry to any land shall be entitled to maintain any such writ or action as aforesaid in respect of such land, such writ or action may be brought at any time before the 1st day of June, 1835, in case the same might have been brought if this act had not been made, notwithstanding the period of twenty years hereinbefore limited shall have expired."

Sect. 38. "Provided also and be it further enacted, that when, on the said 1st day of June, 1835, any person whose right of entry to any land

shall have been taken away by any descent cast, discontinuance or warranty, might maintain any such writ or action as aforesaid in respect of such land, such writ or action may be brought after the said 1st day of June, 1835, but only within the period during which by virtue of the provisions of this act an entry might have been made upon the same land by the person bringing such writ or action if his right of entry had not been so taken away."

Sect. 39. "And be it further enacted, that no descent cast, discontinuance or warranty which may happen or be made after the said 31st day of December, 1833, shall toll or defeat any right of entry or action for the recovery of land."

Sect. 40. "And be it further enacted, that after the said 31st day of December, 1833, no action or suit or other proceeding shall be brought, to recover any sum of money secured by any mortgage, judgment or lien, or otherwise charged upon or payable out of any land or rent, at law or in equity, or any legacy, but within twenty years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for or release of the same, unless in the meantime some part of the principal money, or some interest thereon, shall have been paid, or some acknowledgment of the right thereto shall have been given in writing signed by the person by whom the same shall be payable, or his agent, to the person entitled thereto or his agent; and in such case no such action or suit or proceeding shall be brought but within twenty years after such payment or acknowledgment, or the last of such payments or acknowledgments, if more than one, was given (e)."

Sect. 41. "And be it further enacted, that after the said 31st day of December, 1833, no arrears of dower, nor any damages on account of such arrears, shall be recovered or obtained by any action or suit for a longer period than six years next before the commencement of such action or suit."

Sect. 42. "And be it further enacted, that after the said 31st day of December, 1833, no arrears of rent or of interest in respect of any sum of money charged upon or payable out of any land or rent, or in respect of any legacy, or any damages in respect of such arrears of rent or interest, shall be recovered by any distress, action or suit, but within six years next after the same respectively shall have become due, or next after an acknowledgment of the same in writing shall have been given to the person entitled thereto, or his agent, signed by the person by whom the same was payable, or his agent: Provided nevertheless, that where any prior mortgagee or other incumbrancer shall have been in possession of any land, or in the receipt of the profits thereof, within one year next before an action or suit shall be brought by any person entitled to a subsequent mortgage or other incumbrance on the same land, the person entitled to such subsequent mort-

(e) Vide *Phillipo v. Munnings*, 2 Myl. & Cr. 309; *Lord St. John v. Boughton*, 9 Sim. 219; *Sheppard v. Duke*, ib. 567; *Dearman v. Wyche*, ib. 570; *Mellish v. Brooks*, 3 Beav. 22; *Dinsdale v. Dud-*

ding, 1 Yo. & Col. 265; *Piggott v. Jefferson*, 12 Sim. 26; *Christian v. Devereux*, ib. 265; *Trulock v. Robey*, ib. 402; *Ravenscroft v. Frisby*, 1 Coll. 16; *Burrell v. Earl of Egremont*, 7 Beav. 205.

gage or incumbrance may recover in such action or suit the arrears of interest which shall have become due during the whole time that such prior mortgagee or incumbrancer was in such possession or receipt as aforesaid, although such time may have exceeded the said term of six years (f)."

Sect. 43. "And be it further enacted, that after the said 31st day of December, 1833, no person claiming any tithes, legacy or other property for the recovery of which he might bring an action or suit at law or in equity, shall bring a suit or other proceeding in any spiritual court to recover the same, but within the period during which he might bring such action or suit at law or in equity."

Sect. 44. "Provided always and be it further enacted, that this act shall not extend to Scotland; and it shall not, so far as it relates to any right to permit to or bestow any church, vicarage or other ecclesiastical benefice, extend to Ireland."

Sect. 45. "And be it further enacted, that this act may be amended, altered or repealed during this present session of parliament."

7 WILL. IV. & 1 VICT. c. 28.

"An act to amend an act of the 3rd & 4th years of his late majesty, for the limitation of actions and suits relating to real property, and for simplifying the remedies for trying the right thereto."

"Whereas doubts have been entertained as to the effect of a certain act of parliament made in the third and fourth years of his late majesty King William the Fourth, intituled, 'An Act for the Limitation of Actions and Suits relating to Real Property, and for simplifying the Remedies for trying the Rights thereto,' so far as the same relates to Mortgages, and it is expedient that such doubts should be removed: Be it declared and enacted," &c., "That it shall and may be lawful for any person entitled to or claiming under any mortgage of land, being land within the definition contained in the first section of the said act, to make an entry or bring an action at law or suit in equity to recover such land, at any time within twenty years next after the last payment of any part of the principal money or interest secured by such mortgage, although more than twenty years may have elapsed since the time at which the right to make such entry, or bring such action or suit in equity, shall have first accrued, anything in the said act notwithstanding."

3 & 4 WILL. IV. c. 42.

"An act for the further amendment of the law and the better advancement of justice."

Sect. 3. "And be it further enacted, that all actions of debt for rent upon an indenture of demise, all actions of covenant or debt upon any bond or other specialty, and all actions of debt or scire facias upon any recog-

(f) Vide *Paddon v. Bartlett*, 3 Ad. & Du Vigier v. Lee, 2 Hare, 326; *Ward v. El.* 884; *Holland v. Clark*, 1 Yo. & Col. Arch, 112 Sim. 474. 151; *Sims v. Thomas*, 12 Ad. & El. 536;

nizance, and also all actions of debt upon any award where the submission is not by specialty, *or for any fine due in respect of any copyhold estates*, or for an escape, or for money levied on any fieri facias, and all actions for penalties, damages or sums of money given to the party grieved by any statute now or hereafter to be in force, that shall be sued or brought at any time after the end of the present session of parliament, shall be commenced and sued within the time and limitation hereinafter expressed, and not after, that is to say, the said actions of debt for rent upon an indenture of demise or covenant, or debt upon any bond or other specialty, actions of debt or scire facias upon recognizance, within ten years after the end of this present session, or within twenty years after the cause of such actions or suits, but not after; the said actions by the party grieved, one year after the end of this present session, or within two years after the cause of such actions or suits, but not after; and the said other actions within three years after the end of this present session, or within six years after the cause of such actions or suits, but not after; provided that nothing herein contained shall extend to any action given by any statute where the time for bringing such action is or shall be by any statute specially limited(*g*)."

Sect. 4. "And be it further enacted, that if any person or persons that is or are or shall be entitled to any such action or suit, or to such scire facias, is or are or shall be, at the time of any such cause of action accrued, within the age of twenty-one years, feme covert, non compos mentis, or beyond the seas, then such person or persons shall be at liberty to bring the same actions, so as they commence the same within such times after their coming to or being of full age, discover, of sound memory, or returned from beyond the seas, as other persons having no such impediment should, according to the provisions of this act, have done; and that if any person or persons against whom there shall be any such cause of action is or are or shall be, at the time such cause of action accrued, beyond the seas, then the person or persons entitled to any such cause of action shall be at liberty to bring the same against such person or persons within such times as are before limited after the return of such person or persons from beyond the seas."

Sect. 37. "And be it further enacted, that it shall be lawful for the executors or administrators of any lessor or landlord to distrain upon the lands demised for any term, or at will, for the arrearages of rent due to such lessor or landlord in his lifetime, in like manner as such lessor or landlord might have done in his lifetime."

3 & 4 WILL. IV. c. 74.

"An act for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance."

"Be it enacted by &c., that in the construction of this act the word 'lands' shall extend to manors, advowsons, rectories, messuages, lands, tenements, tithes, rents and hereditaments of any tenure (except copy of

(*g*) Vide *Sims v. Thomas*, sup.; 3 Beav. Company.
90, in *Hodges v. The Croydon Canal*

court roll), and whether corporeal or incorporeal, and any undivided share thereof, but when accompanied by some expression including or denoting the tenure by copy of court roll, shall extend to manors, messuages, lands, tenements and hereditaments of that tenure, and any undivided share thereof; and the word 'estate' shall extend to an estate in equity as well as at law, and shall also extend to any interest, charge, lien or incumbrance in, upon or affecting lands, either at law or in equity, and shall also extend to any interest, charge, lien or incumbrance in, upon or affecting money subject to be invested in the purchase of lands; and the expression 'base fee' shall mean exclusively that estate in fee simple into which an estate tail is converted where the issue in tail are barred, but persons claiming estates by way of remainder or otherwise are not barred; and the expression 'estate tail' in addition to its usual meaning, shall mean a base fee into which an estate tail shall have been converted; and the expression 'actual tenant in tail' shall mean exclusively the tenant of an estate tail which shall not have been barred, and such tenant shall be deemed an actual tenant in tail, although the estate tail may have been divested or turned to a right; and the expression 'tenant in tail' shall mean not only an actual tenant in tail, but also a person who, where an estate tail shall have been barred and converted into a base fee, would have been tenant of such estate tail if the same had not been barred; and the expression 'tenant in tail entitled to a base fee' shall mean a person entitled to a base fee, or to the ultimate beneficial interest in a base fee, and who, if the base fee had not been created, would have been actual tenant in tail; and the expression 'money subject to be invested in the purchase of lands' shall include money, whether raised or to be raised, and whether the amount thereof be or be not ascertained, and shall extend to stocks and funds, and real and other securities, the produce of which is directed to be invested in the purchase of lands; and the lands to be purchased with such money or produce shall extend to lands held by copy of court roll, and also to lands of any tenure in Ireland, or elsewhere out of England, where such lands or any of them are within the scope or meaning of the trust or power directing or authorizing the purchase; and the word 'person' shall extend to a body politic, corporate or collegiate, as well as an individual; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and every word importing the plural number shall extend and be applied to one person or thing as well as several persons or things; and every word importing the masculine gender only shall extend and be applied to a female as well as a male; and every assurance already made or hereafter to be made, whether by deed, will, private act of parliament or otherwise, by which lands are or shall be entailed, or agreed or directed to be entailed, shall be deemed a settlement; and every appointment made in exercise of any power contained in any settlement, or of any other power arising out of the power contained in any settlement, shall be considered as part of such settlement, and the estate created by such appointment shall be considered as having been created by such settlement; and where any such settlement is or shall be made by will, the time of the death of the testator shall be con-

sidered the time when such settlement was made: Provided always, that those words and expressions occurring in this clause, to which more than one meaning is to be attached, shall not have the different meanings given to them by this clause in those cases in which there is anything in the subject or context repugnant to such construction."

Sect. 2. " And be it further enacted, that after the 31st day of December, 1833, no fine shall be levied or common recovery suffered of lands of any tenure, except where parties intending to levy a fine or suffer a common recovery shall, on or before the 31st day of December, 1833, have sued out a writ of dedimus, or any other writ, in the regular proceedings of such fine or recovery; and any fine or common recovery which shall be levied or suffered contrary to this provision shall be absolutely void."

Sect. 3. " And be it further enacted, that in case any person shall, after the 31st day of December, 1833, be liable to levy a fine or suffer a common recovery of lands of any tenure, or to procure some other person to levy a fine or suffer a common recovery of lands of any tenure, under a covenant or agreement already entered into or hereafter to be entered into, before the 1st day of January, 1834, then and in such case, if all the purposes intended to be effected by such fine or recovery can be effected by a disposition under this act, the person liable to levy such fine or suffer such recovery, or to procure some other person to levy such fine or suffer such recovery, shall, after the 31st day of December, 1833, be subject and liable under such covenant or agreement to make or to procure to be made such a disposition under this act as will effect all the purposes intended to be effected by such fine or recovery; but if some only of the purposes intended to be effected by such fine or recovery can be effected by a disposition under this act, then the person so liable to levy such fine or suffer such recovery, or to procure some other person to levy such fine or suffer such recovery as aforesaid, shall, after the 31st day of December, 1833, be subject and liable under such covenant or agreement to make or procure to be made such a disposition under this act as will effect such of the purposes intended to be effected by such fine or recovery as can be effected by a disposition under this act; and in those cases where the purposes intended to be effected by such fine or recovery or any of them cannot be effected by any disposition under this act, then the person so liable to levy such fine or suffer such recovery, or to procure some other person to levy such fine or suffer such recovery as aforesaid, shall, after the 31st day of December, 1833, be liable under such covenant or agreement to execute or to procure to be executed some deed whereby the person intended to levy such fine or suffer such recovery shall declare his desire that such deed shall have the same operation and effect as such fine or recovery would have had if the same had been actually levied or suffered; and the deed by which such declaration shall be made shall, if none of the purposes intended to be effected by such fine or recovery can be effected by a disposition under this act, have the same operation and effect in every respect as such fine or recovery would have had if the same had been actually levied or suffered; but if some only of the purposes intended to be effected by such fine or recovery can be effected by a disposition under this act,

then the deed by which such declaration shall be made shall, so far as the purposes intended to be effected by such fine or recovery cannot be effected by a disposition under this act, have the same operation and effect in every respect as such fine or recovery would have had if the same had been actually levied or suffered."

Sect. 4. "And be it further enacted, that no fine already levied in a superior court of lands of the tenure of ancient demesne which hath not been reversed, and no fine hereafter to be levied of lands of that tenure, shall, upon a writ of deceit already brought by the lord of the manor of which the lands were parcel, the proceedings in which are now pending, or upon a writ of deceit which at any time after the passing of this act may be brought by the lord of the said manor, be reversed as to any person except the lord of the said manor; and the court shall order such fine to be vacated only as to the lord of the said manor; and every such fine which may be reversed as to the lord of the said manor upon such writ of deceit as aforesaid shall still remain as good and valid against and as binding upon the conusors thereof, and all persons claiming under them, as such fine would have been if the same had not been reversed by such writ of deceit as aforesaid; and no common recovery already suffered in a superior court of lands of the tenure of ancient demesne which hath not been reversed, and no common recovery hereafter to be suffered of lands of that tenure, shall, upon a writ of deceit already brought by the lord of the manor of which the lands were parcel, the proceedings in which are now pending, or upon a writ of deceit which at any time after the passing of this act may be brought by the lord of the said manor, be reversed as to any person except the lord of the said manor; and the court shall order such recovery to be vacated only as to the lord of the said manor; and every such recovery which may be reversed as to the lord of the said manor upon such writ of deceit as aforesaid shall still remain as good and valid against and as binding upon the vouchees therein, and all persons claiming under them, as such recovery would have been if the same had not been reversed by such writ of deceit as aforesaid."

Sect. 5. "And be it further enacted, that if at any time before or after the passing of this act a fine or common recovery shall have been levied or suffered, or shall be levied or suffered in a superior court, of lands of the tenure of ancient demesne, and subsequently to the levying or suffering thereof a fine or common recovery shall have been or shall be levied or suffered of the same lands in the court of the lord of the manor of which the lands had been previously parcel, and the fine or common recovery levied or suffered in such superior court shall not have been reversed previously to the levying of the fine or the suffering of the common recovery in the lord's court, then and in every such case the fine or common recovery levied or suffered in the lord's court shall, notwithstanding the alteration or change of the tenure by the fine or common recovery previously levied or suffered in the superior court, be as good, valid and binding as the same would have been if the tenure had not been altered or changed; and that in every other case where any fine or common recovery shall at any time before the passing of this act have been levied or suffered in a

court whose jurisdiction does not extend to the lands of which such fine or recovery shall have been levied or suffered, such fine or recovery shall not be invalid in consequence of its having been levied or suffered in such court, and such court shall be deemed a court of sufficient jurisdiction for all the purposes of such fine or recovery; and in every other case where persons shall have assumed to hold courts in which fines or common recoveries have been levied or suffered, and such courts shall be unlawful or held without due authority, the fines or common recoveries which at any time before the passing of this act may have been levied or suffered in such unlawful or unauthorized courts shall not be invalid in consequence of their having been levied or suffered therein, and such courts shall be deemed courts of sufficient jurisdiction for all the purposes of such fines or recoveries."

Sect. 6. "And be it further enacted, that in every case in which at any time, either before or after the passing of this act, the tenure of ancient demesne has been or shall be suspended or destroyed by the levying of a fine, or the suffering of a common recovery of lands of that tenure in a superior court, and the lord of the manor of which the lands at the time of levying such fine or suffering such recovery were parcel, shall not reverse the same before the 1st day of January, 1834, and shall not by any law in force on the first day of this session of parliament be barred of his right to reverse the same, such lands, provided within the last twenty years immediately preceding the 1st day of January, 1834, the rights of the lord of the manor of which they shall have been parcel shall in any manner have been acknowledged or recognized as to the same lands, shall, from the said 1st day of January, 1834, again become parcel of the said manor, and be subject to the same heriots, rents and services as they would have been subject to if such fine or recovery had not been levied or suffered; and no writ of deceit for the reversal of any fine or common recovery shall be brought after the 31st day of December, 1833."

Sect. 7. "And be it further enacted, that if it shall be apparent, from the deed declaring the uses of any fine already levied or hereafter to be levied, that there is in the indentures, record or any of the proceedings of such fine any error in the name of the conusor or conusee of such fine, or any misdescription or omission of lands intended to have been passed by such fine, then and in every such case the fine, without any amendment of the indentures, record or proceedings in which such error, misdescription or omission shall have occurred, shall be as good and valid as the same would have been, and shall be held to have passed all the lands intended to have been passed thereby, in the same manner as it would have done if there had been no such error, misdescription or omission."

Sect. 8. "And be it further enacted, that if it shall be apparent, from the deed making the tenant to the writ of entry or other writ for suffering a common recovery already suffered or hereafter to be suffered, that there is in the exemplification, record or any of the proceedings of such recovery any error in the name of the tenant, demandant or vouchee in such recovery, or any misdescription or omission of lands intended to have been passed by such recovery, then and in every such case the recovery, without any

amendment of the exemplification, record or proceedings in which such error, misdescription or omission shall have occurred, shall be as good and valid as the same would have been, and shall be held to have passed all the lands intended to have been passed thereby, in the same manner as it would have done if there had been no such error, misdescription or omission."

Sect. 9. "Provided always and be it further enacted, that nothing in this act contained shall lessen or take away the jurisdiction of any court to amend any fine or common recovery, or any proceeding therein, in cases not provided for by this act."

Sect. 10. "And be it further enacted, that no common recovery already suffered or hereafter to be suffered shall be invalid in consequence of the neglect to enrol in due time a bargain and sale purporting to make the tenant to the writ of entry or other writ for suffering such recovery, provided such recovery would have been valid if the bargain and sale purporting to make the tenant to the writ had been duly inrolled."

Sect. 11. "And be it further enacted, that no common recovery already suffered or hereafter to be suffered shall be invalid in consequence of any person in whom an estate at law was outstanding having omitted to make the tenant to the writ of entry or other writ for suffering such recovery, provided the person who was the owner of or had power to dispose of an estate in possession, not being less than an estate for a life or lives in the whole of the rents and profits of the lands in which such estate at law was outstanding, or the ultimate surplus of such rents and profits after payment of any charges thereout, and whether any surplus after payment of such charges shall actually remain or not, shall, within the time limited for making the tenant to the writ for suffering such recovery, have conveyed or disposed of such estate in possession to the tenant to such writ; and an estate shall be deemed to be an estate in possession, notwithstanding there shall be subsisting prior thereto any lease for lives or years, absolute or determinable, upon which a rent is reserved, or any term of years upon which no rent is reserved."

Sect. 12. "Provided always and be it further enacted, that where any fine or common recovery shall before the passing of this act have been wholly reversed, such fine or recovery shall not be rendered valid by this act; and where any fine or common recovery shall before the passing of this act have been reversed as to some only of the parties thereto, or as to some only of the lands therein comprised, such fine or recovery shall not be rendered valid by this act so far as the same shall have been reversed; and where any person who would have been barred by any fine or common recovery, if valid, shall before the passing of this act have had any dealings with the lands comprised in such fine or recovery on the faith of the same being invalid, such fine or recovery shall not be rendered valid by this act; and this act shall not render valid any fine or common recovery as to lands of which any person shall at the time of the passing of this act be in possession in respect of any estate which the fine or common recovery, if valid, would have barred, nor any fine or common recovery which, before the

passing of this act, any court of competent jurisdiction shall have refused to amend; nor shall this act prejudice or affect any proceedings at law or in equity, pending at the time of the passing of this act, in which the validity of such fine or recovery shall be in question between the party claiming under such fine or recovery and the party claiming adversely thereto; and such fine or recovery, if the result of such proceedings shall be to invalidate the same, shall not be rendered valid by this act; and if such proceedings shall abate or become defective in consequence of the death of the party claiming under or adversely to such fine or recovery, any person who but for this act would have a right of action or suit by reason of the invalidity of such fine or recovery, shall retain such right, so that he commence proceedings within six calendar months after the death of such party."

Sect. 13. "And be it further enacted, that after the 31st day of December, 1833, the records of all fines and common recoveries levied and suffered in his majesty's Court of Common Pleas at Westminster, and all the proceedings thereof, shall be deposited in such places and kept by such persons as the said Court of Common Pleas shall from time to time order or direct; and the records of all fines and common recoveries levied and suffered in his majesty's Court of Common Pleas at Lancaster, and all the proceedings thereof, shall be deposited in such places and kept by such persons as his majesty's justices of assize for the county palatine of Lancaster for the time being shall from time to time order or direct; and the records of all fines and common recoveries levied and suffered in the Court of Pleas of the county palatine of Durham, and all the proceedings thereof, shall be deposited in such places and kept by such persons as the said Court of Pleas shall from time to time order or direct; and in the meantime the said records and proceedings shall remain in the same places respectively where they are now deposited, and be kept by the respective persons who would have continued entitled to the custody thereof if this act had not been passed; and while the said records and proceedings respectively shall be kept by such persons respectively, searches may be made and extracts and copies obtained as heretofore, and on paying the accustomed fees; and when any of the records and proceedings shall, by the order of the court or justices having the control over the same, be kept by any other person, then, so far as relates to the records and proceedings in the custody of such other person, searches may be made and extracts or copies obtained at such times and on paying such fees as shall from time to time be ordered by the court of justices having the control over the same; and the extracts or copies so obtained shall be as available in evidence as they would have been if obtained from the person whose duty it would have been to have made and delivered out the same if this act had not been passed."

Sect. 14. "And be it further enacted, that all warranties of lands which after the 31st day of December, 1833, shall be made or entered into by any tenant in tail thereof, shall be absolutely void against the issue in tail, and

all persons whose estates are to take effect after the determination or in defeasance of the estate tail."

Sect. 15. "And be it further enacted, that after the 31st day of December, 1833, every actual tenant in tail, whether in possession, remainder, contingency or otherwise, shall have full power to dispose of for an estate in fee simple absolute, or for any less estate, the lands entailed, as against all persons claiming the lands entailed by force of any estate tail which shall be vested in or might be claimed by, or which but for some previous act would have been vested in or might have been claimed by the person making the disposition, at the time of his making the same, and also as against all persons, including the king's most excellent majesty, his heirs and successors, whose estates are to take effect after the determination or in defeasance of any such estate tail; saving always the rights of all persons in respect of estates prior to the estate tail in respect of which such disposition shall be made, and the rights of all other persons, except those against whom such disposition is by this act authorized to be made."

Sect. 16. "Provided always and be it further enacted, that where under any settlement made before the passing of this act, any woman shall be tenant in tail of lands within the provisions of an act passed in the eleventh year of the reign of his majesty King Henry the Seventh, intituled '*Certain Alienations made by the Wife of the lands of her deceased Husband shall be void*,' the power of disposition hereinbefore contained as to such lands shall not be exercised by her, except with such assent as if this act had not been passed would, under the provisions of the said act of King Henry the Seventh, have rendered valid a fine or common recovery levied or suffered by her of such lands."

Sect. 17. "Provided always and be it further enacted, that, except as to lands comprised in any settlement made before the passing of this act, the said act of the eleventh year of the reign of his majesty King Henry the Seventh shall be and the same is hereby repealed."

Sect. 18. "Provided always and be it further enacted, that the power of disposition hereinbefore contained shall not extend to tenants of estates tail who, by an act passed in the thirty-fourth and thirty-fifth years of the reign of his majesty King Henry the Eighth, intituled '*An Act to embar feigned recovery of Lands wherein the King is in reversion*,' or by any other act, are restrained from barring their estates tail, or to tenants in tail after possibility of issue extinct."

Sect. 19. "And be it further enacted, that after the 31st day of December, 1833, in every case in which an estate tail in any lands shall have been barred and converted into a base fee, either before or on or after that day, the person who, if such estate tail had not been barred, would have been actual tenant in tail of the same lands, shall have full power to dispose of such lands as against all persons, including the king's most excellent majesty, his heirs and successors, whose estates are to take effect after the determination or in defeasance of the base fee into which the estate tail shall have been converted, so as to enlarge the base fee into a fee simple absolute; saving always the rights of all persons in respect of estates prior to

the estate tail which shall have been converted into a base fee, and the rights of all other persons, except those against whom such disposition is by this act authorized to be made."

Sect. 20. "Provided always and be it further enacted, that nothing in this act contained shall enable any person to dispose of any lands entailed in respect of any expectant interest which he may have as issue inheritable to any estate tail therein."

Sect. 21. "Provided always and be it further enacted, that if a tenant in tail of lands shall make a disposition of the same under this act, by way of mortgage, or for any other limited purpose, then and in such case such disposition shall, to the extent of the estate thereby created, be an absolute bar in equity as well as at law to all persons as against whom such disposition is by this act authorized to be made, notwithstanding any intention to the contrary may be expressed or implied in the deed by which the disposition may be effected: Provided always, that if the estate created by such disposition shall be only an estate *pour autre vie*, or for years absolute or determinable, or if by a disposition under this act by a tenant in tail of lands, an interest, charge, lien or incumbrance shall be created without a term of years absolute or determinable, or any greater estate, for securing or raising the same, then such disposition shall in equity be a bar only so far as may be necessary to give full effect to the mortgage, or to such other limited purpose, or to such interest, lien, charge or incumbrance, notwithstanding any intention to the contrary may be expressed or implied in the deed by which the disposition may be effected."

Sect. 22. "And be it further enacted, that if at the time when there shall be a tenant in tail of lands under a settlement, there shall be subsisting in the same lands or any of them, under the same settlement, any estate for years determinable on the dropping of a life or lives, or any greater estate (not being an estate for years), prior to the estate tail, then the person who shall be the owner of the prior estate, or the first of such prior estates if more than one, then subsisting under the same settlement, or who would have been so if no absolute disposition thereof had been made, (the first of such prior estates, if more than one, being for all the purposes of this act deemed the prior estate), shall be the protector of the settlement so far as regards the lands in which such prior estate shall be subsisting, and shall for all the purposes of this act be deemed the owner of such prior estate, although the same may have been charged or incumbered either by the owner thereof, or by the settlor, or otherwise howsoever, and although the whole of the rents and profits be exhausted or required for the payment of the charges and incumbrances on such prior estate, and although such prior estate may have been absolutely disposed of by the owner thereof, or by or in consequence of the bankruptcy or insolvency of such owner, or by any other act or default of such owner; and that an estate by the curtesy, in respect of such estate tail, or of any prior estate created by the same settlement, shall be deemed a prior estate under the same settlement within the meaning of this clause; and that an estate by way of resulting use or trust

to or for the settlor, shall be deemed an estate under the same settlement within the meaning of this clause."

Sect. 23. " Provided always and be it further enacted, that where two or more persons shall be owners under a settlement within the meaning of this act of a prior estate, the sole owner of which estate, if there had been only one, would in respect thereof have been the protector of such settlement, each of such persons, in respect of such undivided share as he could dispose of, shall for all the purposes of this act be deemed the owner of a prior estate, and shall, in exclusion of the other or others of them, be the sole protector of such settlement to the extent of such undivided share."

Sect. 24. " Provided always and be it further enacted, that where a married woman would, if single, be the protector of a settlement in respect of a prior estate, which is not thereby settled, or agreed or directed to be settled to her separate use, she and her husband together shall in respect of such estate be the protector of such settlement, and shall be deemed one owner; but if such prior estate shall by such settlement have been settled, or agreed or directed to be settled to her separate use, then and in such case she alone shall in respect of such estate be the protector of such settlement."

Sect. 25. " Provided always and be it further enacted, that, except in the case of a lease hereinafter provided for, where an estate shall be limited by a settlement by way of confirmation, or where the settlement shall merely have the effect of restoring an estate, in either of those cases such estate shall for the purposes of this act, so far as regards the protector of the settlement, be deemed an estate subsisting under such settlement."

Sect. 26. " Provided always and be it further enacted, that where a lease at a rent shall be created or confirmed by a settlement, the person in whose favour such lease shall be created or confirmed shall not in respect thereof be protector of such settlement."

Sect. 27. " Provided always and be it further enacted, that no woman in respect of her dower, and (except in the case hereinafter provided for of a bare trustee under a settlement made on or before the 31st day of December, 1833,) no bare trustee, heir, executor, administrator or assign, in respect of any estate taken by him as such bare trustee, heir, executor, administrator or assign, shall be the protector of a settlement."

Sect. 28. " Provided always and be it further enacted, that where under any settlement there shall be more than one estate prior to an estate tail, and the person who shall be the owner within the meaning of this act of any such prior estate, in respect of which, but for the two last preceding clauses or either of them, he would have been the protector of the settlement, shall by virtue of such clauses or either of them be excluded from being the protector, then and in such case the person (if any) who, if such estate did not exist, would be the protector of the settlement, shall be such protector."

Sect. 29. " Provided always and be it further enacted, that where already, or on or before the 31st day of December, 1833, an estate under a settlement shall have been disposed of either absolutely or otherwise, and either for valuable consideration or not, the person who in respect of such

nizance, and also all actions of debt upon any award where the submission is not by specialty, *or for any fine due in respect of any copyhold estates*, or for an escape, or for money levied on any fieri facias, and all actions for penalties, damages or sums of money given to the party grieved by any statute now or hereafter to be in force, that shall be sued or brought at any time after the end of the present session of parliament, shall be commenced and sued within the time and limitation hereinafter expressed, and not after, that is to say, the said actions of debt for rent upon an indenture of demise or covenant, or debt upon any bond or other specialty, actions of debt or scire facias upon recognizance, within ten years after the end of this present session, or within twenty years after the cause of such actions or suits, but not after; the said actions by the party grieved, one year after the end of this present session, or within two years after the cause of such actions or suits, but not after; and the said other actions within three years after the end of this present session, or within six years after the cause of such actions or suits, but not after; provided that nothing herein contained shall extend to any action given by any statute where the time for bringing such action is or shall be by any statute specially limited(g)."

Sect. 4. "And be it further enacted, that if any person or persons that is or are or shall be entitled to any such action or suit, or to such scire facias, is or are or shall be, at the time of any such cause of action accrued, within the age of twenty-one years, feme covert, non compos mentis, or beyond the seas, then such person or persons shall be at liberty to bring the same actions, so as they commence the same within such times after their coming to or being of full age, discover, of sound memory, or returned from beyond the seas, as other persons having no such impediment should, according to the provisions of this act, have done; and that if any person or persons against whom there shall be any such cause of action is or are or shall be, at the time such cause of action accrued, beyond the seas, then the person or persons entitled to any such cause of action shall be at liberty to bring the same against such person or persons within such times as are before limited after the return of such person or persons from beyond the seas."

Sect. 37. "And be it further enacted, that it shall be lawful for the executors or administrators of any lessor or landlord to distrain upon the lands demised for any term, or at will, for the arrearages of rent due to such lessor or landlord in his lifetime, in like manner as such lessor or landlord might have done in his lifetime."

3 & 4 WILL. IV. c. 74.

"An act for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance."

"Be it enacted by &c., that in the construction of this act the word 'lands' shall extend to manors, advowsons, rectories, messuages, lands, tenements, tithes, rents and hereditaments of any tenure (except copy of

(g) Vide *Sims v. Thomas*, sup.; 3 Beav. Company.
90, in *Hodges v. The Croydon Canal*

court roll), and whether corporeal or incorporeal, and any undivided share thereof, but when accompanied by some expression including or denoting the tenure by copy of court roll, shall extend to manors, messuages, lands, tenements and hereditaments of that tenure, and any undivided share thereof; and the word 'estate' shall extend to an estate in equity as well as at law, and shall also extend to any interest, charge, lien or incumbrance in, upon or affecting lands, either at law or in equity, and shall also extend to any interest, charge, lien or incumbrance in, upon or affecting money subject to be invested in the purchase of lands; and the expression 'base fee' shall mean exclusively that estate in fee simple into which an estate tail is converted where the issue in tail are barred, but persons claiming estates by way of remainder or otherwise are not barred; and the expression 'estate tail' in addition to its usual meaning, shall mean a base fee into which an estate tail shall have been converted; and the expression 'actual tenant in tail' shall mean exclusively the tenant of an estate tail which shall not have been barred, and such tenant shall be deemed an actual tenant in tail, although the estate tail may have been divested or turned to a right; and the expression 'tenant in tail' shall mean not only an actual tenant in tail, but also a person who, where an estate tail shall have been barred and converted into a base fee, would have been tenant of such estate tail if the same had not been barred; and the expression 'tenant in tail entitled to a base fee' shall mean a person entitled to a base fee, or to the ultimate beneficial interest in a base fee, and who, if the base fee had not been created, would have been actual tenant in tail; and the expression 'money subject to be invested in the purchase of lands' shall include money, whether raised or to be raised, and whether the amount thereof be or be not ascertained, and shall extend to stocks and funds, and real and other securities, the produce of which is directed to be invested in the purchase of lands; and the lands to be purchased with such money or produce shall extend to lands held by copy of court roll, and also to lands of any tenure in Ireland, or elsewhere out of England, where such lands or any of them are within the scope or meaning of the trust or power directing or authorizing the purchase; and the word 'person' shall extend to a body politic, corporate or collegiate, as well as an individual; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and every word importing the plural number shall extend and be applied to one person or thing as well as several persons or things; and every word importing the masculine gender only shall extend and be applied to a female as well as a male; and every assurance already made or hereafter to be made, whether by deed, will, private act of parliament or otherwise, by which lands are or shall be entailed, or agreed or directed to be entailed, shall be deemed a settlement; and every appointment made in exercise of any power contained in any settlement, or of any other power arising out of the power contained in any settlement, shall be considered as part of such settlement, and the estate created by such appointment shall be considered as having been created by such settlement; and where any such settlement is or shall be made by will, the time of the death of the testator shall be con-

sidered the time when such settlement was made: Provided always, that those words and expressions occurring in this clause, to which more than one meaning is to be attached, shall not have the different meanings given to them by this clause in those cases in which there is anything in the subject or context repugnant to such construction."

Sect. 2. " And be it further enacted, that after the 31st day of December, 1833, no fine shall be levied or common recovery suffered of lands of any tenure, except where parties intending to levy a fine or suffer a common recovery shall, on or before the 31st day of December, 1833, have sued out a writ of dedimus, or any other writ, in the regular proceedings of such fine or recovery; and any fine or common recovery which shall be levied or suffered contrary to this provision shall be absolutely void."

Sect. 3. " And be it further enacted, that in case any person shall, after the 31st day of December, 1833, be liable to levy a fine or suffer a common recovery of lands of any tenure, or to procure some other person to levy a fine or suffer a common recovery of lands of any tenure, under a covenant or agreement already entered into or hereafter to be entered into, before the 1st day of January, 1834, then and in such case, if all the purposes intended to be effected by such fine or recovery can be effected by a disposition under this act, the person liable to levy such fine or suffer such recovery, or to procure some other person to levy such fine or suffer such recovery, shall, after the 31st day of December, 1833, be subject and liable under such covenant or agreement to make or to procure to be made such a disposition under this act as will effect all the purposes intended to be effected by such fine or recovery; but if some only of the purposes intended to be effected by such fine or recovery can be effected by a disposition under this act, then the person so liable to levy such fine or suffer such recovery, or to procure some other person to levy such fine or suffer such recovery as aforesaid, shall, after the 31st day of December, 1833, be subject and liable under such covenant or agreement to make or procure to be made such a disposition under this act as will effect such of the purposes intended to be effected by such fine or recovery as can be effected by a disposition under this act; and in those cases where the purposes intended to be effected by such fine or recovery or any of them cannot be effected by any disposition under this act, then the person so liable to levy such fine or suffer such recovery, or to procure some other person to levy such fine or suffer such recovery as aforesaid, shall, after the 31st day of December, 1833, be liable under such covenant or agreement to execute or to procure to be executed some deed whereby the person intended to levy such fine or suffer such recovery shall declare his desire that such deed shall have the same operation and effect as such fine or recovery would have had if the same had been actually levied or suffered; and the deed by which such declaration shall be made shall, if none of the purposes intended to be effected by such fine or recovery can be effected by a disposition under this act, have the same operation and effect in every respect as such fine or recovery would have had if the same had been actually levied or suffered; but if some only of the purposes intended to be effected by such fine or recovery can be effected by a disposition under this act,

then the deed by which such declaration shall be made shall, so far as the purposes intended to be effected by such fine or recovery cannot be effected by a disposition under this act, have the same operation and effect in every respect as such fine or recovery would have had if the same had been actually levied or suffered."

Sect. 4. " And be it further enacted, that no fine already levied in a superior court of lands of the tenure of ancient demesne which hath not been reversed, and no fine hereafter to be levied of lands of that tenure, shall, upon a writ of deceit already brought by the lord of the manor of which the lands were parcel, the proceedings in which are now pending, or upon a writ of deceit which at any time after the passing of this act may be brought by the lord of the said manor, be reversed as to any person except the lord of the said manor; and the court shall order such fine to be vacated only as to the lord of the said manor; and every such fine which may be reversed as to the lord of the said manor upon such writ of deceit as aforesaid shall still remain as good and valid against and as binding upon the consors thereof, and all persons claiming under them, as such fine would have been if the same had not been reversed by such writ of deceit as aforesaid; and no common recovery already suffered in a superior court of lands of the tenure of ancient demesne which hath not been reversed, and no common recovery hereafter to be suffered of lands of that tenure, shall, upon a writ of deceit already brought by the lord of the manor of which the lands were parcel, the proceedings in which are now pending, or upon a writ of deceit which at any time after the passing of this act may be brought by the lord of the said manor, be reversed as to any person except the lord of the said manor; and the court shall order such recovery to be vacated only as to the lord of the said manor; and every such recovery which may be reversed as to the lord of the said manor upon such writ of deceit as aforesaid shall still remain as good and valid against and as binding upon the vouches therein, and all persons claiming under them, as such recovery would have been if the same had not been reversed by such writ of deceit as aforesaid."

Sect. 5. " And be it further enacted, that if at any time before or after the passing of this act a fine or common recovery shall have been levied or suffered, or shall be levied or suffered in a superior court, of lands of the tenure of ancient demesne, and subsequently to the levying or suffering thereof a fine or common recovery shall have been or shall be levied or suffered of the same lands in the court of the lord of the manor of which the lands had been previously parcel, and the fine or common recovery levied or suffered in such superior court shall not have been reversed previously to the levying of the fine or the suffering of the common recovery in the lord's court, then and in every such case the fine or common recovery levied or suffered in the lord's court shall, notwithstanding the alteration or change of the tenure by the fine or common recovery previously levied or suffered in the superior court, be as good, valid and binding as the same would have been if the tenure had not been altered or changed; and that in every other case where any fine or common recovery shall at any time before the passing of this act have been levied or suffered in a

court whose jurisdiction does not extend to the lands of which such fine or recovery shall have been levied or suffered, such fine or recovery shall not be invalid in consequence of its having been levied or suffered in such court, and such court shall be deemed a court of sufficient jurisdiction for all the purposes of such fine or recovery; and in every other case where persons shall have assumed to hold courts in which fines or common recoveries have been levied or suffered, and such courts shall be unlawful or held without due authority, the fines or common recoveries which at any time before the passing of this act may have been levied or suffered in such unlawful or unauthorized courts shall not be invalid in consequence of their having been levied or suffered therein, and such courts shall be deemed courts of sufficient jurisdiction for all the purposes of such fines or recoveries."

Sect. 6. "And be it further enacted, that in every case in which at any time, either before or after the passing of this act, the tenure of ancient demesne has been or shall be suspended or destroyed by the levying of a fine, or the suffering of a common recovery of lands of that tenure in a superior court, and the lord of the manor of which the lands at the time of levying such fine or suffering such recovery were parcel, shall not reverse the same before the 1st day of January, 1834, and shall not by any law in force on the first day of this session of parliament be barred of his right to reverse the same, such lands, provided within the last twenty years immediately preceding the 1st day of January, 1834, the rights of the lord of the manor of which they shall have been parcel shall in any manner have been acknowledged or recognized as to the same lands, shall, from the said 1st day of January, 1834, again become parcel of the said manor, and be subject to the same heriots, rents and services as they would have been subject to if such fine or recovery had not been levied or suffered; and no writ of deceit for the reversal of any fine or common recovery shall be brought after the 31st day of December, 1833."

Sect. 7. "And be it further enacted, that if it shall be apparent, from the deed declaring the uses of any fine already levied or hereafter to be levied, that there is in the indentures, record or any of the proceedings of such fine any error in the name of the conusor or conusee of such fine, or any misdescription or omission of lands intended to have been passed by such fine, then and in every such case the fine, without any amendment of the indentures, record or proceedings in which such error, misdescription or omission shall have occurred, shall be as good and valid as the same would have been, and shall be held to have passed all the lands intended to have been passed thereby, in the same manner as it would have done if there had been no such error, misdescription or omission."

Sect. 8. "And be it further enacted, that if it shall be apparent, from the deed making the tenant to the writ of entry or other writ for suffering a common recovery already suffered or hereafter to be suffered, that there is in the exemplification, record or any of the proceedings of such recovery any error in the name of the tenant, demandant or vouchee in such recovery, or any misdescription or omission of lands intended to have been passed by such recovery, then and in every such case the recovery, without any

amendment of the exemplification, record or proceedings in which such error, misdescription or omission shall have occurred, shall be as good and valid as the same would have been, and shall be held to have passed all the lands intended to have been passed thereby, in the same manner as it would have done if there had been no such error, misdescription or omission."

Sect. 9. "Provided always and be it further enacted, that nothing in this act contained shall lessen or take away the jurisdiction of any court to amend any fine or common recovery, or any proceeding therein, in cases not provided for by this act."

Sect. 10. "And be it further enacted, that no common recovery already suffered or hereafter to be suffered shall be invalid in consequence of the neglect to enrol in due time a bargain and sale purporting to make the tenant to the writ of entry or other writ for suffering such recovery, provided such recovery would have been valid if the bargain and sale purporting to make the tenant to the writ had been duly inrolled."

Sect. 11. "And be it further enacted, that no common recovery already suffered or hereafter to be suffered shall be invalid in consequence of any person in whom an estate at law was outstanding having omitted to make the tenant to the writ of entry or other writ for suffering such recovery, provided the person who was the owner of or had power to dispose of an estate in possession, not being less than an estate for a life or lives in the whole of the rents and profits of the lands in which such estate at law was outstanding, or the ultimate surplus of such rents and profits after payment of any charges thereout, and whether any surplus after payment of such charges shall actually remain or not, shall, within the time limited for making the tenant to the writ for suffering such recovery, have conveyed or disposed of such estate in possession to the tenant to such writ; and an estate shall be deemed to be an estate in possession, notwithstanding there shall be subsisting prior thereto any lease for lives or years, absolute or determinable, upon which a rent is reserved, or any term of years upon which no rent is reserved."

Sect. 12. "Provided always and be it further enacted, that where any fine or common recovery shall before the passing of this act have been wholly reversed, such fine or recovery shall not be rendered valid by this act; and where any fine or common recovery shall before the passing of this act have been reversed as to some only of the parties thereto, or as to some only of the lands therein comprised, such fine or recovery shall not be rendered valid by this act so far as the same shall have been reversed; and where any person who would have been barred by any fine or common recovery, if valid, shall before the passing of this act have had any dealings with the lands comprised in such fine or recovery on the faith of the same being invalid, such fine or recovery shall not be rendered valid by this act; and this act shall not render valid any fine or common recovery as to lands of which any person shall at the time of the passing of this act be in possession in respect of any estate which the fine or common recovery, if valid, would have barred, nor any fine or common recovery which, before the

passing of this act, any court of competent jurisdiction shall have refused to amend; nor shall this act prejudice or affect any proceedings at law or in equity, pending at the time of the passing of this act, in which the validity of such fine or recovery shall be in question between the party claiming under such fine or recovery and the party claiming adversely thereto; and such fine or recovery, if the result of such proceedings shall be to invalidate the same, shall not be rendered valid by this act; and if such proceedings shall abate or become defective in consequence of the death of the party claiming under or adversely to such fine or recovery, any person who but for this act would have a right of action or suit by reason of the invalidity of such fine or recovery, shall retain such right, so that he commence proceedings within six calendar months after the death of such party."

Sect. 13. "And be it further enacted, that after the 31st day of December, 1833, the records of all fines and common recoveries levied and suffered in his majesty's Court of Common Pleas at Westminster, and all the proceedings thereof, shall be deposited in such places and kept by such persons as the said Court of Common Pleas shall from time to time order or direct; and the records of all fines and common recoveries levied and suffered in his majesty's Court of Common Pleas at Lancaster, and all the proceedings thereof, shall be deposited in such places and kept by such persons as his majesty's justices of assize for the county palatine of Lancaster for the time being shall from time to time order or direct; and the records of all fines and common recoveries levied and suffered in the Court of Pleas of the county palatine of Durham, and all the proceedings thereof, shall be deposited in such places and kept by such persons as the said Court of Pleas shall from time to time order or direct; and in the meantime the said records and proceedings shall remain in the same places respectively where they are now deposited, and be kept by the respective persons who would have continued entitled to the custody thereof if this act had not been passed; and while the said records and proceedings respectively shall be kept by such persons respectively, searches may be made and extracts and copies obtained as heretofore, and on paying the accustomed fees; and when any of the records and proceedings shall, by the order of the court or justices having the control over the same, be kept by any other person, then, so far as relates to the records and proceedings in the custody of such other person, searches may be made and extracts or copies obtained at such times and on paying such fees as shall from time to time be ordered by the court of justices having the control over the same; and the extracts or copies so obtained shall be as available in evidence as they would have been if obtained from the person whose duty it would have been to have made and delivered out the same if this act had not been passed."

Sect. 14. "And be it further enacted, that all warranties of lands which after the 31st day of December, 1833, shall be made or entered into by any tenant in tail thereof, shall be absolutely void against the issue in tail, and

all persons whose estates are to take effect after the determination or in defeasance of the estate tail."

Sect. 15. "And be it further enacted, that after the 31st day of December, 1833, every actual tenant in tail, whether in possession, remainder, contingency or otherwise, shall have full power to dispose of for an estate in fee simple absolute, or for any less estate, the lands entailed, as against all persons claiming the lands entailed by force of any estate tail which shall be vested in or might be claimed by, or which but for some previous act would have been vested in or might have been claimed by the person making the disposition, at the time of his making the same, and also as against all persons, including the king's most excellent majesty, his heirs and successors, whose estates are to take effect after the determination or in defeasance of any such estate tail; saving always the rights of all persons in respect of estates prior to the estate tail in respect of which such disposition shall be made, and the rights of all other persons, except those against whom such disposition is by this act authorized to be made."

Sect. 16. "Provided always and be it further enacted, that where under any settlement made before the passing of this act, any woman shall be tenant in tail of lands within the provisions of an act passed in the eleventh year of the reign of his majesty King Henry the Seventh, intituled '*Certain Alienations made by the Wife of the lands of her deceased Husband shall be void*,' the power of disposition hereinbefore contained as to such lands shall not be exercised by her, except with such assent as if this act had not been passed would, under the provisions of the said act of King Henry the Seventh, have rendered valid a fine or common recovery levied or suffered by her of such lands."

Sect. 17. "Provided always and be it further enacted, that, except as to lands comprised in any settlement made before the passing of this act, the said act of the eleventh year of the reign of his majesty King Henry the Seventh shall be and the same is hereby repealed."

Sect. 18. "Provided always and be it further enacted, that the power of disposition hereinbefore contained shall not extend to tenants of estates tail who, by an act passed in the thirty-fourth and thirty-fifth years of the reign of his majesty King Henry the Eighth, intituled '*An Act to imbar feigned recovery of Lands wherein the King is in reversion*,' or by any other act, are restrained from barring their estates tail, or to tenants in tail after possibility of issue extinct."

Sect. 19. "And be it further enacted, that after the 31st day of December, 1833, in every case in which an estate tail in any lands shall have been barred and converted into a base fee, either before or on or after that day, the person who, if such estate tail had not been barred, would have been actual tenant in tail of the same lands, shall have full power to dispose of such lands as against all persons, including the king's most excellent majesty, his heirs and successors, whose estates are to take effect after the determination or in defeasance of the base fee into which the estate tail shall have been converted, so as to enlarge the base fee into a fee simple absolute; saving always the rights of all persons in respect of estates prior to

the estate tail which shall have been converted into a base fee, and the rights of all other persons, except those against whom such disposition is by this act authorized to be made."

Sect. 20. "Provided always and be it further enacted, that nothing in this act contained shall enable any person to dispose of any lands entailed in respect of any expectant interest which he may have as issue inheritable to any estate tail therein."

Sect. 21. "Provided always and be it further enacted, that if a tenant in tail of lands shall make a disposition of the same under this act, by way of mortgage, or for any other limited purpose, then and in such case such disposition shall, to the extent of the estate thereby created, be an absolute bar in equity as well as at law to all persons as against whom such disposition is by this act authorized to be made, notwithstanding any intention to the contrary may be expressed or implied in the deed by which the disposition may be effected: Provided always, that if the estate created by such disposition shall be only an estate *pour autre vie*, or for years absolute or determinable, or if by a disposition under this act by a tenant in tail of lands, an interest, charge, lien or incumbrance shall be created without a term of years absolute or determinable, or any greater estate, for securing or raising the same, then such disposition shall in equity be a bar only so far as may be necessary to give full effect to the mortgage, or to such other limited purpose, or to such interest, lien, charge or incumbrance, notwithstanding any intention to the contrary may be expressed or implied in the deed by which the disposition may be effected."

Sect. 22. "And be it further enacted, that if at the time when there shall be a tenant in tail of lands under a settlement, there shall be subsisting in the same lands or any of them, under the same settlement, any estate for years determinable on the dropping of a life or lives, or any greater estate (not being an estate for years), prior to the estate tail, then the person who shall be the owner of the prior estate, or the first of such prior estates if more than one, then subsisting under the same settlement, or who would have been so if no absolute disposition thereof had been made, (the first of such prior estates, if more than one, being for all the purposes of this act deemed the prior estate), shall be the protector of the settlement so far as regards the lands in which such prior estate shall be subsisting, and shall for all the purposes of this act be deemed the owner of such prior estate, although the same may have been charged or incumbered either by the owner thereof, or by the settlor, or otherwise howsoever, and although the whole of the rents and profits be exhausted or required for the payment of the charges and incumbrances on such prior estate, and although such prior estate may have been absolutely disposed of by the owner thereof, or by or in consequence of the bankruptcy or insolvency of such owner, or by any other act or default of such owner; and that an estate by the curtesy, in respect of such estate tail, or of any prior estate created by the same settlement, shall be deemed a prior estate under the same settlement within the meaning of this clause; and that an estate by way of resulting use or trust

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to or for the settlor, shall be deemed an estate under the same settlement within the meaning of this clause."

Sect. 23. " Provided always and be it further enacted, that where two or more persons shall be owners under a settlement within the meaning of this act of a prior estate, the sole owner of which estate, if there had been only one, would in respect thereof have been the protector of such settlement, each of such persons, in respect of such undivided share as he could dispose of, shall for all the purposes of this act be deemed the owner of a prior estate, and shall, in exclusion of the other or others of them, be the sole protector of such settlement to the extent of such undivided share."

Sect. 24. " Provided always and be it further enacted, that where a married woman would, if single, be the protector of a settlement in respect of a prior estate, which is not thereby settled, or agreed or directed to be settled to her separate use, she and her husband together shall in respect of such estate be the protector of such settlement, and shall be deemed one owner; but if such prior estate shall by such settlement have been settled, or agreed or directed to be settled to her separate use, then and in such case she alone shall in respect of such estate be the protector of such settlement."

Sect. 25. " Provided always and be it further enacted, that, except in the case of a lease hereinafter provided for, where an estate shall be limited by a settlement by way of confirmation, or where the settlement shall merely have the effect of restoring an estate, in either of those cases such estate shall for the purposes of this act, so far as regards the protector of the settlement, be deemed an estate subsisting under such settlement."

Sect. 26. " Provided always and be it further enacted, that where a lease at a rent shall be created or confirmed by a settlement, the person in whose favour such lease shall be created or confirmed shall not in respect thereof be protector of such settlement."

Sect. 27. " Provided always and be it further enacted, that no woman in respect of her dower, and (except in the case hereinafter provided for of a bare trustee under a settlement made on or before the 31st day of December, 1833,) no bare trustee, heir, executor, administrator or assign, in respect of any estate taken by him as such bare trustee, heir, executor, administrator or assign, shall be the protector of a settlement."

Sect. 28. " Provided always and be it further enacted, that where under any settlement there shall be more than one estate prior to an estate tail, and the person who shall be the owner within the meaning of this act of any such prior estate, in respect of which, but for the two last preceding clauses or either of them, he would have been the protector of the settlement, shall by virtue of such clauses or either of them be excluded from being the protector, then and in such case the person (if any) who, if such estate did not exist, would be the protector of the settlement, shall be such protector."

Sect. 29. " Provided always and be it further enacted, that where already, or on or before the 31st day of December, 1833, an estate under a settlement shall have been disposed of either absolutely or otherwise, and either for valuable consideration or not, the person who in respect of such

estate would, if this act had not been passed, have been the proper person to have made the tenant to the writ of entry or other writ for suffering a common recovery of the lands intailed by such settlement, shall, during the continuance of the estate which conferred the right to make the tenant to such writ of entry or other writ, be the protector of such settlement."

Sect. 30. " Provided always and be it further enacted, that where any person having either already, or on or before the 31st day of December, 1883, either for valuable consideration or not, disposed of, either absolutely or otherwise, a remainder or reversion in fee in any lands, or created any estate out of such remainder or reversion, would under this act, if this clause had not been inserted, have been the protector of the settlement by which the lands were intailed in which such remainder or reversion may be subsisting, and thereby be enabled to concur in the barring of such remainder or reversion, which he could not have done if he had not become such protector, then and in every such case the person who, if this act had not been passed, would have been the proper person to have made the tenant to the writ of entry or other writ for suffering a common recovery of such lands, shall, during the continuance of the estate which conferred the right to make the tenant to such writ of entry or other writ, be the protector of such settlement."

Sect. 31. " Provided always and be it further enacted, that where, under any settlement of lands made before the passing of this act, the person who, if this act had not been passed, would have been the proper person to make the tenant to the writ of entry or other writ for suffering a common recovery of such lands for the purpose of barring any estate tail or other estate under such settlement, shall be a bare trustee, such trustee shall, during the continuance of the estate conferring on him the right to make the tenant to such writ of entry or other writ, be the protector of such settlement."

Sect. 32. " Provided always and be it further enacted, that it shall be lawful for any settlor entailing lands to appoint, by the settlement by which the lands shall be entailed, any number of persons in esse, not exceeding three, and not being aliens, to be protector of the settlement in lieu of the person who would have been the protector if this clause had not been inserted, and either for the whole or any part of the period for which such person might have continued protector, and by means of a power to be inserted in such settlement to perpetuate, during the whole or any part of such period, the protectorship of the settlement in any one person or number of persons in esse, and not being an alien or aliens, whom the donee of the power shall think proper by deed to appoint protector of the settlement in the place of any one person or number of persons who shall die or shall by deed relinquish his or their office of protector; and the person or persons so appointed shall, in case of there being no other person then protector of the settlement, be the protector, and shall, in case of there being any other person then protector of the settlement, be protector jointly with such other person: Provided nevertheless, that by virtue or means of any such appointment, the number of the persons to compose the protector shall never exceed three: Provided further nevertheless, that every deed by

which a protector shall be appointed under a power in a settlement, and every deed by which a protector shall relinquish his office, shall be void, unless inrolled in his majesty's High Court of Chancery within six calendar months after the execution thereof: Provided further nevertheless, that the person who, but for this clause, would have been sole protector of the settlement, may be one of the persons to be appointed protector under this clause, if the settlor shall think fit, and shall, unless otherwise directed by the settlor, act as sole protector, if the other persons constituting the protector shall have ceased to be so by death or relinquishment of the office by deed, and no other person shall have been appointed in their place (*h*)."

Sect. 83. " Provided always and be it further enacted, that if any person, protector of a settlement, shall be lunatic, idiot, or of unsound mind, and whether he shall have been found such by inquisition or not, then the lord high chancellor of Great Britain, or the lord keeper or the lords commissioners for the custody of the great seal of Great Britain, for the time being, or other the person or persons for the time being intrusted by the king's sign manual with the care and commitment of the custody of the persons and estates of persons found lunatic, idiot, and of unsound mind, shall be the protector of such settlement in lieu of the person who shall be such lunatic or idiot or of unsound mind as aforesaid; or if any person, protector of a settlement, shall be convicted of treason or felony, or if any person, not being the owner of a prior estate under a settlement, shall be protector of such settlement, and shall be an infant, or if it shall be uncertain whether such last mentioned person be living or dead, then his majesty's High Court of Chancery shall be the protector of such settlement in lieu of the person who shall be an infant, or whose existence cannot be ascertained as aforesaid; or if any settlor entailing lands shall in the settlement by which the lands shall be entailed declare that the person who, as owner of a prior estate under such settlement, would be entitled to be protector of the settlement shall not be such protector, and shall not appoint any person to be protector in his stead, then the said Court of Chancery shall, as to the lands in which such prior estate shall be subsisting, be the protector of the settlement during the continuance of such estate; or if in any other case where there shall be subsisting under a settlement an estate prior to an estate tail under the same settlement, and such prior estate shall be sufficient to qualify the owner thereof to be protector of the settlement, and there shall happen at any time to be no protector of the settlement as to the lands in which the prior estate shall be subsisting, the said Court of Chancery shall, while there shall be no such protector, and the prior estate shall be subsisting, be the protector of the settlement as to such lands (*i*)."

Sect. 84. Provided always and be it further enacted, that if at the time when any person, actual tenant in tail of lands under a settlement, but not entitled to the remainder or reversion in fee immediately expectant on the

(*h*) Vide in *Bankes v. Le Despencer*, 11 Sim. 527.

(*i*) Vide *Grant v. Yea*, 3 Myl. & Keen, 245; *Re Blewitt*, ib. 250; *Re Wood*, 3

Myl. & Craig, 266; *Re Wainewright*, 1 Phil. 258, overruling the decision in the same case, reported 11 Sim. 352.

determination of his estate tail, shall be desirous of making under this act a disposition of the lands entailed, there shall be a protector of such settlement, then and in every such case the consent of such protector shall be requisite to enable such actual tenant in tail to dispose of the lands entailed to the full extent to which he is hereinbefore authorized to dispose of the same; but such actual tenant in tail may, without such consent, make a disposition under this act of the lands entailed, which shall be good against all persons who, by force of any estate tail which shall be vested in or might be claimed by, or which but for some previous act or default would have been vested in or might have been claimed by, the person making the disposition at the time of his making the same, shall claim the lands entailed."

Sect. 35. " Provided always and be it further enacted, that where an estate tail shall have been converted into a base fee, in such case, so long as there shall be a protector of the settlement by which the estate tail was created, the consent of such protector shall be requisite to enable the person who would have been tenant of the estate tail if the same had not been barred, to exercise, as to the lands in respect of which there shall be such protector, the power of disposition hereinbefore contained."

Sect. 36. " And be it further enacted, that any device, shift or contrivance by which it shall be attempted to control the protector of a settlement in giving his consent, or to prevent him in any way from using his absolute discretion in regard to his consent, and also any agreement entered into by the protector of a settlement to withhold his consent, shall be void; and that the protector of a settlement shall not be deemed to be a trustee in respect of his power of consent; and a court of equity shall not control or interfere to restrain the exercise of his power of consent, nor treat his giving consent as a breach of trust."

Sect. 37. " Provided always and be it further enacted, that the rules of equity in relation to dealings and transactions between the donee of a power and any object of the power in whose favour the same may be exercised, shall not be held to apply to dealings and transactions between the protector of a settlement and a tenant in tail under the same settlement, upon the occasion of the protector giving his consent to a disposition by a tenant in tail under this act."

Sect. 38. Provided always and be it further enacted, that when a tenant in tail of lands under a settlement shall have already created or shall hereafter create in such lands, or any of them, a voidable estate in favour of a purchaser for valuable consideration, and shall afterwards under this act, by any assurance, other than a lease not requiring enrolment, make a disposition of the lands in which such voidable estate shall be created, or any of them, such disposition, whatever its object may be, and whatever may be the extent of the estate intended to be thereby created, shall, if made by the tenant in tail with the consent of the protector (if any) of the settlement, or by the tenant in tail alone, if there shall be no such protector, have the effect of confirming such voidable estate in the lands thereby disposed of to its full extent as against all persons except those whose rights are saved by this act; but if at the time of making the dispo-

sition there shall be a protector of the settlement, and such protector shall not consent to the disposition, and the tenant in tail shall not without such consent be capable under this act of confirming the voidable estate to its full extent, then and in such case such disposition shall have the effect of confirming such voidable estate so far as such tenant in tail would then be capable under this act of confirming the same without such consent: Provided always, that if such disposition shall be made to a purchaser for valuable consideration, who shall not have express notice of the voidable estate, then and in such case the voidable estate shall not be confirmed as against such purchaser and the persons claiming under him."

Sect. 39. "And be it further enacted, that if a base fee in any lands, and the remainder or reversion in fee in the same lands, shall, at the time of the passing of this act, or at any time afterwards, be united in the same person, and at any time after the passing of this act there shall be no intermediate estate between the base fee and the remainder or reversion, then and in such case the base fee shall not merge, but shall be *ipso facto* enlarged into as large an estate as the tenant in tail, with the consent of the protector, if any, might have created by any disposition under this act if such remainder or reversion had been vested in any other person."

Sect. 40. "And be it further enacted, that every disposition of lands under this act by a tenant in tail thereof shall be effected by some one of the assurances (not being a will) by which such tenant in tail could have made the disposition if his estate were an estate at law in fee simple absolute: Provided nevertheless, that no disposition by a tenant in tail shall be of any force either at law or in equity, under this act, unless made or evidenced by deed; and that no disposition by a tenant in tail resting only in contract, either express or implied, or otherwise, and whether supported by a valuable or meritorious consideration or not, shall be of any force at law or in equity under this act, notwithstanding such disposition shall be made or evidenced by deed; and if the tenant in tail making the disposition shall be a married woman, the concurrence of her husband shall be necessary to give effect to the same; and any deed which may be executed by her for effecting the disposition shall be acknowledged by her as hereinafter directed."

Sect. 41. "Provided always and be it further enacted, that no assurance by which any disposition of lands shall be effected under this act by a tenant in tail thereof, (except a lease for any term not exceeding twenty-one years, to commence from the date of such lease, or from any time not exceeding twelve calendar months from the date of such lease, where a rent shall be thereby reserved, which, at the time of granting such lease, shall be a rack rent, or not less than five sixth parts of a rack rent,) shall have any operation under this act, unless it be inrolled in his majesty's High Court of Chancery within six calendar months after the execution thereof; and if the assurance by which any disposition of lands shall be effected under this act shall be a bargain and sale, such assurance, although not inrolled within the time prescribed by the act passed in the twenty-seventh

year of the reign of his majesty, King Henry the Eighth, intituled '*For Inrollment of Bargains and Sales*,' shall, if inrolled in the said Court of Chancery within the time prescribed by this clause, be as good and valid as the same would have been if the same had been inrolled in the said court within the time prescribed by the said act of Henry the Eighth."

Sect. 42. "And be it further enacted, that the consent of the protector of a settlement to the disposition under this act of a tenant in tail, shall be given either by the same assurance by which the disposition shall be effected, or by a deed distinct from the assurance, and to be executed either on or at any time before the day on which the assurance shall be made, otherwise the consent shall be void."

Sect. 43. "And be it further enacted, that if the protector of a settlement shall, by a distinct deed, give his consent to the disposition of a tenant in tail, it shall be considered that such protector has given an absolute and unqualified consent, unless in such deed he shall refer to the particular assurance by which the disposition shall be effected, and shall confine his consent to the disposition thereby made."

Sect. 44. "And be it further enacted, that it shall not be lawful for the protector of a settlement who, under this act, shall have given his consent to the disposition of a tenant in tail, to revoke such consent."

Sect. 45. "And be it further enacted, that any married woman, being either alone or jointly with her husband protector of a settlement, may under this act, in the same manner as if she were a feme sole, give her consent to the disposition of a tenant in tail."

Sect. 46. "Provided always and be it further enacted, that the consent of a protector to the disposition of a tenant in tail shall, if given by a deed distinct from the assurance by which the disposition shall be effected by the tenant in tail, be void, unless such deed be inrolled in his majesty's High Court of Chancery either at or before the time when the assurance shall be inrolled."

Sect. 47. "And be it further enacted, that in cases of dispositions of lands under this act by tenants in tail thereof, and also in cases of consents by protectors of settlements to dispositions of lands under this act by tenants in tail thereof, the jurisdiction of courts of equity shall be altogether excluded, either on the behalf of a person claiming for a valuable or meritorious consideration, or not, in regard to the specific performance of contracts, and the supplying of defects in the execution either of the powers of disposition given by this act to tenants in tail, or of the powers of consent given by this act to protectors of settlements, and the supplying under any circumstances of the want of execution of such powers of disposition and consent respectively, and in regard to giving effect in any other manner to any act or deed by a tenant in tail or protector of a settlement which in a court of law would not be an effectual disposition or consent under this act; and that no disposition of lands under this act by a tenant in tail thereof in equity, and no consent by a protector of a settlement to a disposition of lands under this act by a tenant in tail thereof in equity, shall be

of any force, unless such disposition or consent would in case of an estate tail at law be an effectual disposition or consent under this act in a court of law."

Sect. 48. " Provided always and be it further enacted, that in every case in which the lord high chancellor, lord keeper or lords commissioners for the custody of the great seal, or other the person or persons intrusted with the care and commitment of the custody of the persons and estates of persons found lunatic, idiot, and of unsound mind, or his majesty's High Court of Chancery, shall be the protector of a settlement, such lord high chancellor, lord keeper or lords commissioners, or person or persons so intrusted as aforesaid, or the said Court of Chancery (as the case may be), while protector of such settlement shall, on the motion or petition in a summary way by a tenant in tail under such settlement, have full power to consent to a disposition under this act by such tenant in tail, and the disposition to be made by such tenant in tail upon such motion or petition as aforesaid shall be such as shall be approved of by such lord high chancellor, lord keeper or lords commissioners, or person or persons so intrusted as aforesaid, or the said Court of Chancery (as the case may be); and it shall be lawful for such lord high chancellor, lord keeper or lords commissioners, or person or persons so intrusted as aforesaid, or the said Court of Chancery (as the case may be), to make such orders in the matter as shall be thought necessary; and if such lord high chancellor, lord keeper or lords commissioners, or person or persons so intrusted as aforesaid, or the said Court of Chancery (as the case may be), shall, in lieu of any such person as aforesaid, be the protector of a settlement, and there shall be any other person protector of the same settlement jointly with such person as aforesaid, then and in every such case the disposition by the tenant in tail, though approved of as aforesaid, shall not be valid, unless such other person being protector as aforesaid shall consent thereto in the manner in which the consent of the protector is by this act required to be given (*k*)."

Sect. 49. " Provided always and be it further enacted, that in every case in which the lord high chancellor, lord keeper or lords commissioners for the custody of the great seal, or other the person or persons intrusted with the care and commitment of the custody of the persons and estates of persons found lunatic, idiot, and of unsound mind, or his majesty's High Court of Chancery, shall be the protector of a settlement, no document or instrument, as evidence of the consent of such protector to the disposition of a tenant in tail under such settlement, shall be requisite beyond the order in obedience to which the disposition shall have been made."

Sect. 50. " And be it further enacted, that all the previous clauses in this act, so far as circumstances and the different tenures will admit, shall apply to lands held by copy of court roll, except that a disposition of any such lands under this act by a tenant in tail thereof, whose estate shall be an estate at law, shall be made by surrender, and except that a disposition of any such lands under this act by a tenant in tail thereof, whose estate shall be merely an estate in equity, may be made either by surrender or by

(*k*) Vide *Re Newman*, 2 Myl. & Craig, 112; *Re Wood*, 3 ib. 266.

a deed as hereinafter provided, and except so far as such clauses are otherwise altered or varied by the clauses hereinafter contained."

Sect. 51. " Provided always and be it further enacted, that if the consent of the protector of a settlement to the disposition of lands held by copy of court roll by a tenant in tail thereof shall be given by deed, such deed shall, either at or before the time when the surrender shall be made by which the disposition shall be effected, be executed by such protector, and produced to the lord of the manor of which the lands are parcel, or to his steward, or to the deputy of such steward; and the consent of such protector shall be void, unless such deed shall be so executed and produced; and on the production of the deed, the lord, or steward or deputy steward, shall by writing under his hand, to be indorsed on the deed, acknowledge that the same was produced within the time limited, and shall cause such deed, with the indorsement thereon, to be entered on the court rolls of the manor; and the indorsement, purporting to be so signed, shall of itself be *primâ facie* evidence that the deed was produced within the time limited, and that the person who signed the indorsement was the lord of the manor, or his steward, or the deputy of such steward; and after such deed shall have been so entered, the lord of the manor, or his steward, or the deputy of such steward, shall indorse thereon a memorandum signed by him, testifying the entry of the same on the court rolls."

Sect. 52. " Provided always and be it further enacted, that if the consent of the protector of a settlement to the disposition of lands held by copy of court roll by a tenant in tail thereof shall not be given by deed, then and in such case the consent shall be given by the protector to the person taking the surrender by which the disposition shall be effected; and if the surrender shall be made out of court, it shall be expressly stated in the memorandum of such surrender that such consent had been given, and such memorandum shall be signed by the protector; and the lord of the manor of which the lands are parcel, or his steward, or the deputy of such steward, shall cause the memorandum, with such statement therein as to the consent, to be entered on the court rolls of the manor; and such memorandum shall be good evidence of the consent and of the surrender therein stated to be made; and the entry of the memorandum on the court rolls, or a copy of such entry, shall be as available for the purposes of evidence as any other entry on the court rolls, or a copy thereof; but if the surrender shall be made in court, the lord of the manor, or his steward, or the deputy of such steward, shall cause an entry of such surrender, containing a statement that such consent had been given, to be made on the court rolls; and the entry of such surrender on the court rolls, or a copy of such entry, shall be as available for the purposes of evidence as any other entry on the court rolls, or a copy thereof."

Sect. 53. " Provided always and be it further enacted, that a tenant in tail of lands held by copy of court roll, whose estate shall be merely an estate in equity, shall have full power by deed to dispose of such lands under this act in the same manner in every respect as he could have done if they

had been of freehold tenure; and all the previous clauses in this act shall, so far as circumstances will admit, apply to the lands in respect of which any such equitable tenant in tail shall avail himself of this present clause; and the deed by which the disposition shall be effected shall be entered on the court rolls of the manor of which the lands thereby disposed of may be parcel (*l*); and if there shall be a protector to consent to the disposition, and such protector shall give his consent by a distinct deed, the consent shall be void, unless the deed of consent be executed by the protector either on or at any time before the day on which the deed of disposition shall be executed by the equitable tenant in tail; and such deed of consent shall be entered on the court rolls; and it shall be imperative on the lord of the manor, or his steward, or the deputy of such steward, when required so to do, to enter such deed or deeds on the court rolls, and he shall indorse on each deed so entered a memorandum, signed by him, testifying the entry of the same on the court rolls: Provided always, that every deed by which lands held by copy of court roll shall be disposed of under this clause by an equitable tenant in tail thereof, shall be void against any person claiming such lands, or any of them, for valuable consideration under any subsequent assurance duly entered on the court rolls of the manor of which the lands may be parcel, unless the deed of disposition by the equitable tenant in tail be entered on the court rolls of such manor before the subsequent assurance shall have been entered."

Sect. 54. " Provided always and be it further enacted, that in no case where any disposition under this act of lands held by copy of court roll, by a tenant in tail thereof, shall be effected by surrender or by deed, shall the surrender or the memorandum, or a copy thereof, or the deed of disposition, or the deed, if any, by which the protector shall consent to the disposition, require enrolment otherwise than by entry on the court rolls."

Sect. 55. " And be it further enacted, that after the 31st day of December, 1833, so much of an act passed in the sixth year of the reign of his late majesty King George the Fourth, intituled '*An Act to amend the laws relating to Bankrupts*,' as empowers the commissioners named in any commission of bankrupt issued against a tenant in tail to make sale of any lands, tenements and hereditaments, situate either in England or Ireland, whereof such bankrupt shall be seized of any estate tail in possession, reversion or remainder, and whereof no reversion or remainder is in the crown, the gift or provision of the crown, shall be and the same is hereby repealed: Provided always, that such repeal shall not extend to the lands, whatever the tenure may be, of any person adjudged a bankrupt under any commission of bankrupt, or under any fiat which, in pursuance of the said act of the sixth year of the reign of King George the Fourth, or of any former act concerning bankrupts, or of an act passed in the first and second years of the reign of his majesty King William the Fourth, intituled '*An Act to establish a Court of Bankruptcy*,' hath been or shall be issued

(*l*) An affidavit disclosing the contents held to be sufficient in *Crosby v. Fortescue*, 5 Dowl. 273; ante, pt. 1, pp. 61, 62. without annexing a copy of the deed was

on or before the 31st day of December, 1833 : Provided also, that such repeal shall not have the effect of reviving in any respect the acts repealed by the said act of the sixth year of the reign of King George the Fourth, or any of them."

Sect. 56. " And be it further enacted, that any commissioner acting in the execution of any fiat which after the 31st day of December, 1833, shall be issued in pursuance of the said act passed in the first and second years of the reign of King William the Fourth, under which any person shall be adjudged a bankrupt who at the time of issuing such fiat, or at any time afterwards, before he shall have obtained his certificate, shall be an actual tenant in tail of lands of any tenure, shall by deed dispose of such lands to a purchaser for valuable consideration, for the benefit of the creditors of such actual tenant in tail, and shall create by any such disposition as large an estate in the lands disposed of as the actual tenant in tail, if he had not become bankrupt, could have done under this act at the time of such disposition : Provided always, that if at the time of the disposition of such lands, or any of them, by such commissioner as aforesaid, there shall be a protector of the settlement by which the estate of such actual tenant in tail in the lands disposed of by such commissioner was created, and the consent of such protector would have been requisite to have enabled the actual tenant in tail, if he had not become bankrupt, to have disposed of such lands to the full extent to which, if there had been no such protector, he could under this act have disposed of the same, and such protector shall not consent to the disposition, then and in such case the estate created in such lands, or any of them, by the disposition of such commissioner, shall be as large an estate as the actual tenant in tail, if he had not become bankrupt, could at the time of such disposition have created under this act in such lands without the consent of the protector (m)."

Sect. 57. " And be it further enacted, that any commissioner acting in the execution of any such fiat as aforesaid under which any person shall be adjudged a bankrupt who at the time of issuing such fiat, or at any time afterwards before he shall have obtained his certificate, shall be a tenant in tail entitled to a base fee in lands of any tenure, shall by deed dispose of such lands to a purchaser for valuable consideration, for the benefit of the creditors of the person so entitled as aforesaid, provided at the time of the disposition there be no protector of the settlement by which the estate tail converted into the base fee was created ; and by such disposition the base fee shall be enlarged into as large an estate as the same could at the time of such disposition have been enlarged into under this act by the person so entitled if he had not become bankrupt (n)."

Sect. 58. " And be it further enacted, that the commissioner acting in the execution of any such fiat as aforesaid under which a person being, or before obtaining his certificate becoming, an actual tenant in tail of lands of any tenure, or a tenant in tail entitled to a base fee in lands of any tenure,

(m) See ante, pt. 1, p. 65 ; ante, p. 850, n. (d).

(n) See sect. 65, post.

shall be adjudged a bankrupt, shall, if there shall be a protector of the settlement by which the estate tail of such actual tenant in tail, or the estate tail converted into a base fee (as the case may be), was created, stand in the place of such actual tenant in tail, or tenant in tail so entitled as aforesaid, so far as regards the consent of such protector; and the disposition of such lands, or any of them, by such commissioner as aforesaid, if made with the consent of such protector, shall, whether such commissioner may have made under this act a prior disposition of the same lands without the consent of such protector or not, or whether a prior sale or conveyance of the same lands shall have been made or not, under the said acts of the sixth year of King George the Fourth and the first and second years of King William the Fourth, or either of them, or any acts hereafter to be passed concerning bankrupts, have the same effect as such disposition would have had if such actual tenant in tail, or tenant in tail so entitled as aforesaid, had not become bankrupt, and such disposition had been made by him under this act, with the consent of such protector; and all the previous clauses of this act, in regard to the consent of the protector to the disposition of a tenant in tail of lands not held by copy of court roll, and in regard to the time and manner of giving such consent, and in regard to the inrolment of the deed of consent, where such deed shall be distinct from the assurance by which the disposition of the commissioner shall be effected, shall, except so far as the same may be varied by the clause next hereinafter contained, apply to every consent that may be given by virtue of this present clause."

Sect. 59. "And be it further enacted, that every deed by which any commissioner acting in the execution of any such fiat as aforesaid shall, under this act, dispose of lands not held by copy of court roll, shall be void unless inrolled in his majesty's High Court of Chancery within six calendar months after the execution thereof; and every deed by which any commissioner acting in the execution of any such fiat as aforesaid shall, under this act, dispose of lands held by copy of court roll, shall be entered on the court rolls of the manor of which the lands may be parcel; and if there shall be a protector who shall consent to the disposition of such lands held by copy of court roll, and he shall give his consent by a distinct deed, the consent shall be void, unless the deed of consent be executed by the protector either on or at any time before the day on which the deed of disposition shall be executed by the commissioner; and such deed of consent shall be entered on the court rolls; and it shall be imperative on the lord of every manor of which any lands disposed of under this act by any such commissioner as aforesaid may be parcel, or the steward of such lord, or the deputy of such steward, to enter on the court rolls of the manor every deed required by this present clause to be entered on the court rolls, and he shall indorse on every deed so entered a memorandum signed by him, testifying the entry of the same on the court rolls."

Sect. 60. "And be it further enacted, that if any commissioner acting in the execution of any such fiat as aforesaid shall, under this act, dispose of any lands of any tenure of which the bankrupt shall be actual tenant in

tail, and in consequence of there being a protector of the settlement by which the estate of such actual tenant in tail was created, and of his not giving his consent, only a base fee shall by such disposition be created in such lands, and if at any time afterwards during the continuance of the base fee there shall cease to be a protector of such settlement, then and in such case and immediately thereupon, such base fee shall be enlarged into the same estate into which the same could have been enlarged under this act if at the time of the disposition by such commissioner as aforesaid there had been no such protector."

Sect. 61. " And be it further enacted, that if a tenant in tail entitled to a base fee in lands of any tenure shall be adjudged a bankrupt at the time when there shall be a protector of the settlement by which the estate tail converted into the base fee was created, and if such lands shall be sold or conveyed under the said acts of the sixth year of King George the Fourth and the first and second years of King William the Fourth, or either of them, or any other acts hereafter to be passed concerning bankrupts, and if at any time afterwards during the continuance of the base fee in such lands there shall cease to be a protector of such settlement, then and in such case and immediately thereupon, the base fee in such lands shall be enlarged into the same estate into which the same could have been enlarged under this act if at the time of the adjudication of such bankruptcy there had been no such protector, and the commissioner acting in the execution of the fiat under which the tenant in tail so entitled shall have been adjudged a bankrupt had disposed of such lands under this act."

Sect 62. " Provided always and be it further enacted, that where an actual tenant in tail of lands of any tenure, or a tenant in tail entitled to a base fee in lands of any tenure, shall have already created or shall hereafter create in such lands, or any of them, a voidable estate in favour of a purchaser for valuable consideration, and such actual tenant in tail, or tenant in tail so entitled as aforesaid, shall be adjudged a bankrupt under any such fiat as aforesaid, and the commissioner acting in the execution of such fiat shall make any disposition under this act of the lands in which such voidable estate shall be created, or any of them, then and in such case, if there shall be no protector of the settlement by which the estate tail of the actual tenant in tail, or the estate tail converted into a base fee, as the case may be, was created, or being such protector he shall consent to the disposition by such commissioner as aforesaid, whether such commissioner may have made under this act a previous disposition of such lands or not, or whether a prior sale or conveyance of the same lands shall have been made or not under the said acts of the sixth year of King George the Fourth and the first and second years of King William the Fourth, or either of them, or any other acts hereafter to be passed concerning bankrupts, the disposition by such commissioner shall have the effect of confirming such voidable estate in the lands thereby disposed of to its full extent as against all persons except those whose rights are saved by this act; and if at the time of the disposition by such commissioner, in the case of an actual tenant in tail, there shall be a protector, and such protector shall not consent to the

disposition by such commissioner, and such actual tenant in tail, if he had not been adjudged a bankrupt, would not without such consent have been capable under this act of confirming the voidable estate to its full extent, then and in such case such disposition shall have the effect of confirming such voidable estate so far as such actual tenant in tail, if he had not been adjudged a bankrupt, could at the time of such disposition have been capable under this act of confirming the same without such consent; and if at any time after the disposition of such lands by such commissioner, and while only a base fee shall be subsisting in such lands, there shall cease to be a protector of such settlement, and such protector shall not have consented to the disposition by such commissioner, then and in such case such voidable estate, so far as the same may not have been previously confirmed, shall be confirmed to its full extent as against all persons except those whose rights are saved by this act: provided always, that if the disposition by any such commissioner as aforesaid shall be made to a purchaser for valuable consideration who shall not have express notice of the voidable estate, then and in such case the voidable estate shall not be confirmed against such purchaser and the persons claiming under him."

Sect. 63. "And be it further enacted, that all acts and deeds done and executed by a tenant in tail of lands of any tenure, who shall be adjudged a bankrupt under any such fiat as aforesaid, and which shall affect such lands or any of them, and which, if he had been seized of or entitled to such lands in fee simple absolute, would have been void against the assignees of the bankrupt's estate, and all persons claiming under them, shall be void against any disposition which may be made of such lands under this act by such commissioner as aforesaid."

Sect. 64. "Provided always and be it further enacted, that, subject and without prejudice to the powers of disposition given by this act to the commissioner acting in the execution of any such fiat as aforesaid under which a person being, or before obtaining his certificate becoming, an actual tenant in tail of lands of any tenure, or a tenant in tail entitled to a base fee in lands of any tenure, shall be adjudged a bankrupt, and also subject and without prejudice to the estate in such lands which may be vested in the assignees of the bankrupt's estate, and also subject and without prejudice to the rights of all persons claiming under the said assignees in respect of such lands or any of them, such actual tenant in tail, or tenant in tail so entitled as aforesaid, shall have the same powers of disposition under this act in regard to such lands as he would have had if he had not become bankrupt."

Sect. 65. "And be it further enacted, that any disposition under this act of lands of any tenure by any commissioner acting in the execution of any such fiat as aforesaid under which a person being, or before obtaining his certificate becoming, an actual tenant in tail of such lands, or a tenant in tail entitled to a base fee in such lands shall be adjudged a bankrupt, shall, although the bankrupt be dead at the time of the disposition (o), be in the

(o) N.B. In *Doe v. Spencer v. Clark*, 5 Barn. & Ald. 458, the power given by

1 Jac. 1, c. 15, s. 17, to proceed in the distribution of the lands, &c. of a bank-

following cases as valid and effectual as the same would have been, and have the same operation under this act as the same would have had if the bankrupt were alive, (that is to say,) in case at the time of the bankrupt's decease there shall be no protector of the settlement by which the estate tail of the actual tenant in tail, or the estate tail converted into a base fee, as the case may be, was created; or in case the bankrupt had been an actual tenant in tail of such lands, and there shall at the time of the disposition be any issue inheritable to the estate tail of the bankrupt in such lands, and either no protector of the settlement by which the estate tail was created, or a protector of such settlement who, in the manner required by this act, shall consent to the disposition, or a protector of such settlement who shall not consent to the disposition; or in case the bankrupt had been a tenant in tail entitled to a base fee in such lands, and there shall at the time of the disposition be any issue who, if the base fee had not been created, would have been actual tenant in tail of such lands, and either no protector of the settlement by which the estate tail converted into a base fee was created, or a protector of such settlement who, in the manner required by this act, shall consent to the disposition (*p*)."

Sect. 66. "And be it further enacted, that every disposition which under this act may be made by any commissioner acting in the execution of any such fiat as aforesaid of lands held by copy of court roll shall, in every case in which the estate of the bankrupt in such lands shall not be merely an estate in equity, operate in the same manner as if such lands had, for the same estate which shall have been acquired by the disposition by such commissioner as aforesaid, been duly surrendered into the hands of the lord of the manor of which they may be parcel, to the use of the person to whom the same shall have been disposed of by such commissioner; and the person to whom the lands shall have been so disposed of by such commissioner may claim to be admitted tenant of such lands, to hold the same by the ancient rents, customs and services, in the same manner as if such lands had been duly surrendered to his use into the hands of the lord of the manor of which such lands may be parcel, and shall, upon being admitted tenant of such lands, to hold the same as aforesaid, pay the fines, fees and other dues which could have been lawfully demanded upon such admittance if such lands had, for the same estate which shall have been acquired by the disposition by such commissioner as aforesaid, passed by surrender into the hands of the lord, to the use of the person so admitted."

Sect. 67. "And be it further enacted, that the rents and profits of any lands of which any commissioner acting in the execution of any such fiat as aforesaid hath power to make disposition under this act, shall in the meantime and until such disposition shall be made, or until it shall be ascertained that such disposition shall not be required for the benefit of the creditors of the person adjudged bankrupt under the fiat, be received by the assignees of the estate of the bankrupt, for the benefit of his creditors;

rupt, after his death, was held to extend to a fee simple conditional; ante, pt. 1, p. 64. Note also that the 1 Jac. 1, c. 15,

was repealed by the 6 Geo. 4, c. 16. Ante, pt. 1, pp. 54, 55, 64, 83.

(*p*) Ante, pt. 1, p. 64, n. (*d*).

and the assignees may proceed by action of debt for the recovery of such rents and profits, or may distrain for the same upon the lands subject to the payment thereof; and in case any action of trespass shall be brought for taking any such distress, may plead thereto the general issue, and give this act or other special matter in evidence; and also, in case any such distress shall be replevied, shall have power to avow or make cognizance generally in such manner and form as any landlord may now do by virtue of the statute made in the eleventh year of the reign of his majesty King George the Second, intituled '*An Act for the more effectual securing the Payment of Rents and preventing Frauds by Tenants,*' or by any other law or statute now in force or hereafter to be made for the more effectually recovering of rent in arrear; and such assignees and their bailiffs, agents and servants, shall also have all such and the same remedies, powers, privileges and advantages of pleading, avowing and making cognizance, and be entitled to the same costs and damages, and the same remedies for the recovery thereof, as landlords, their bailiffs, agents and servants are now or hereafter may be by law entitled to have when rent is in arrear; and such assignees shall also have the same power and authority of enforcing the observance of all covenants, conditions and agreements in respect of the lands of which such commissioner as aforesaid hath the power of disposition under this act, and in respect of the rents and profits thereof, and of entry into and upon the same lands for the nonobservance of any such covenant, condition and agreement, and of expelling and amoving therefrom the tenants or other occupiers thereof, and thereby determining and putting an end to the estate of the persons who shall not have observed such covenants, conditions and agreements, as the bankrupt would have had in case he had not been adjudged a bankrupt: provided always, that this clause shall apply to all lands held by copy of court roll, but shall only apply to those lands of any other tenure which any commissioner acting in the execution of any such fiat as aforesaid may have power to dispose of under this act after the bankrupt's decease."

Sect. 68. "And be it further enacted, that all the provisions in this act contained for the benefit of the creditors of persons who under such fiats as aforesaid shall be adjudged bankrupts after the 31st day of December, 1833, and for the confirmation in consequence of bankruptcy of voidable estates created by them, shall extend and apply to the lands of any tenure in Ireland of such persons, as fully and effectually as if this act had throughout extended to lands of any tenure in Ireland; saving always the rights of the king's most excellent majesty, his heirs and successors, to any reversion or remainder in the crown in lands in Ireland."

Sect. 69. "Provided always and be it further enacted, that in all cases of bankruptcy, every deed of disposition under this act of lands in Ireland by any commissioner acting in the execution of any such fiat as aforesaid, and also every deed by which the protector of a settlement of lands in Ireland shall consent, shall be inrolled in his majesty's High Court of Chancery in Ireland within six calendar months after the execution thereof, and not in his majesty's High Court of Chancery in England."

Sect. 70. "And be it further enacted, that after the 31st day of December, 1833, an act passed in the seventh year of the reign of his late majesty King George the Fourth, intituled "*An Act for repealing an Act passed in the thirty-ninth and fortieth years of the reign of his late majesty King George the Third, intituled 'An Act for the Relief of Persons entitled to entailed Estates to be purchased with trust monies,' and for making further Provision in lieu thereof*(q)," shall be and the same is hereby repealed, except as to such proceedings under the act hereby repealed as shall have been commenced before the 1st day of January, 1834, and which may be continued under the authority and according to the provisions of the act hereby repealed: Provided always, that the act repealed by the said act of the seventh year of the reign of his late majesty King George the Fourth shall not be revived."

Sect. 71. "And be it further enacted, that lands to be sold, whether freehold or leasehold, or of any other tenure, where the money arising from the sale thereof shall be subject to be invested in the purchase of lands to be settled, so that any person, if the lands were purchased, would have an estate tail therein, and also money subject to be invested in the purchase of lands to be settled, so that any person, if the lands were purchased, would have an estate tail therein, shall for all the purposes of this act be treated as the lands to be purchased, and be considered subject to the same estates as the lands to be purchased would, if purchased, have been actually subject to; and all the previous clauses in this act, so far as circumstances will admit, shall, in the case of the lands to be sold as aforesaid being either freehold or leasehold, or of any other tenure, except copy of court roll, apply to such lands in the same manner as if the lands to be purchased with the money to arise from the sale thereof were directed to be freehold, and were actually purchased and settled; and shall, in the case of the lands to be sold as aforesaid being held by copy of court roll, apply to such lands in the same manner as if the lands to be purchased with the money to arise from the sale thereof were directed to be copyhold, and were actually purchased and settled; and shall, in the case of money subject to be invested in the purchase of lands to be so settled as aforesaid, apply to such money in the same manner as if such money were directed to be laid out in the purchase of freehold lands, and such lands were actually purchased and settled; save and except that in every case where under this clause a disposition shall be to be made of leasehold lands for years absolute or determinable, so circumstanced as aforesaid, or of money so circumstanced as aforesaid, such leasehold lands or money shall, as to the person in whose favour or for whose benefit the disposition is to be made, be treated as personal estate, and, except in case of bankruptcy, the assurance by which the disposition of such leasehold lands or money shall be effected shall be an

(q) By the act of 7 Geo. 4, where money was subject to be invested in freehold or copyhold land to be settled in tail, the same instead of being so invested might,

upon petition to a court of equity, be paid to the person who would have been tenant in tail of the land, if purchased.

assignment by deed, which shall have no operation under this act, unless inrolled in his majesty's High Court of Chancery within six calendar months after the execution thereof; and in every case of bankruptcy the disposition of such leasehold lands or money shall be made by the commissioner, and completed by inrolment in the same manner as hereinbefore required in regard to lands not held by copy of court roll (*r*)."

Sect. 72. "And be it further enacted, that so far as regards any person adjudged a bankrupt under any such fiat as aforesaid, the provisions of the clause lastly hereinbefore contained shall, for the benefit of the creditors of the bankrupt, apply to lands in Ireland to be sold, whether freehold or leasehold, or of any other tenure, where the money arising from the sale thereof shall be subject to be invested in the purchase of lands to be settled so that the bankrupt, if the lands were purchased, would have an estate tail therein, and also to money under the control of any court of equity in Ireland, or of or to which any individuals as trustees may be possessed or entitled in Ireland, and which shall be subject to be invested in the purchase of lands to be settled so that the bankrupt, if the lands were purchased, would have an estate tail therein, as fully and effectually as if this act had throughout extended to Ireland: Provided always, that every deed to be executed by any commissioner or protector, in pursuance of this clause, in regard to lands in Ireland to be so sold as aforesaid, shall be inrolled in his majesty's High Court of Chancery in Ireland within six calendar months after the execution thereof; but every deed to be executed by any commissioner or protector, in pursuance of this clause, in regard to money subject to be invested in the purchase of lands to be so settled as aforesaid, shall be inrolled in his majesty's High Court of Chancery in England within six calendar months after the execution thereof, and not in his majesty's High Court of Chancery in Ireland; saving always the rights of the king's most excellent majesty, his heirs and successors, to any reversion or remainder in the crown in lands in Ireland to be sold."

Sect. 73. "And be it further enacted, that any rule or practice requiring deeds to be acknowledged before inrolment shall not apply to any deed by this act required to be inrolled in his majesty's High Court of Chancery in England or Ireland."

Sect. 74. "And be it further enacted, that every deed required to be inrolled in his majesty's High Court of Chancery in England or Ireland, by which lands, or money subject to be invested in the purchase of lands, shall be disposed of under this act, shall, when inrolled as required by this act, operate and take effect in the same manner as it would have done if the inrolment thereof had not been required, except that every such deed shall be void against any person claiming the lands or money thereby disposed of, or any part thereof, for valuable consideration, under any subsequent deed duly inrolled under this act, if such subsequent deed shall be first inrolled."

Sect. 75. "And be it further enacted, that it shall be lawful for his majesty's High Court of Chancery in England, as to deeds to be inrolled in Eng-

land under this act, and for his majesty's High Court of Chancery in Ireland, as to deeds to be inrolled in Ireland under this act, from time to time to make such orders as the court shall think fit touching the amount of the fees and charges to be paid for the inrolment of such deeds, and to be paid for searches for such deeds in the office of inrolments, and to be paid for copies of the inrolments of deeds under this act, where such copies are examined with the inrolments, and signed by the proper officer having the custody of such inrolments."

Sect. 76. "And be it further enacted, that it shall be lawful for his majesty's Court of Common Pleas at Westminster from time to time to make such orders as the court shall think fit touching the amount of the fees and charges to be paid for the entries of deeds by this act required to be entered on the court rolls of manors, and for the indorsements thereon, and for taking the consents of the protectors of settlements of lands held by copy of court roll, where such consents shall not be given by deed, and for taking surrenders by which dispositions shall be made under this act by tenants in tail of lands held by copy of court roll, and for entries of such surrenders or the memorandums thereof on the court rolls (*s*)."

Sect. 77. "And be it further enacted, that after the 31st day of December, 1833, it shall be lawful for every married woman, in every case except that of being tenant in tail, for which provision is already made by this act, by deed to dispose of lands of *any tenure*, and money subject to be invested in the purchase of lands, and also to dispose of, release, surrender or extinguish any estate which she alone, or she and her husband in her right, may have in any lands of any tenure, or in any such money as aforesaid, and also to release or extinguish any power which may be vested in, or limited or reserved to her in regard to any lands of any tenure, or any such money as aforesaid, or in regard to any estate in any lands of any tenure, or in any such money as aforesaid, as fully and effectually as she could do if she were a feme sole; save and except that no such disposition, release, surrender or extinguishment shall be valid and effectual, unless the husband concur in the deed by which the same shall be effected, nor unless the deed be acknowledged by her as hereinafter directed: Provided always, that this act shall not extend to lands held by copy of court roll of or to which a married woman, or she and her husband in her right, may be seized or entitled for an estate at law, in any case in which any of the objects to be effected by this clause could before the passing of this act have been effected by her, in concurrence with her husband, by surrender into the hands of the lord of the manor of which the lands may be parcel (*t*)."

Sect. 78. "Provided always and be it further enacted, that the powers of disposition given to a married woman by this act shall not interfere with any power which, independently of this act, may be vested in, or limited or reserved to her, so as to prevent her from exercising such power in any

(*s*) See the rules and table of costs, post..

(*t*) Post, s. 90. Vide also the 6th section of 8 & 9 Vict. c. 106, post, authoriz-

ing the disposition by deed of contingent and other interests, every disposition by a married woman being made conformably to the provisions of this act.

case, except so far as by any disposition made by her under this act she may be prevented from so doing in consequence of such power having been suspended or extinguished by such disposition."

Sect. 79. "And be it further enacted, that every deed to be executed by a married woman for any of the purposes of this act, except such as may be executed by her in the character of protector for the sole purpose of giving her consent to the disposition of a tenant in tail, shall, upon her executing the same, or afterwards, be produced and acknowledged by her as her act and deed before a judge of one of the superior courts at Westminster, or a master in chancery, or before two of the perpetual commissioners, or two special commissioners, to be respectively appointed as hereinafter provided."

Sect. 80. "And be it further enacted, that such judge, master in chancery, or commissioners as aforesaid, before he or they shall receive the acknowledgment by any married woman of any deed by which any disposition, release, surrender or extinguishment shall be made by her under this act, shall examine her, apart from her husband, touching her knowledge of such deed, and shall ascertain whether she freely and voluntarily consents to such deed, and unless she freely and voluntarily consent to such deed, shall not permit her to acknowledge the same; and in such case such deed shall, so far as relates to the execution thereof by such married woman, be void."

Sect. 81. And be it further enacted, that for the purpose of providing convenient means of taking acknowledgments by married women of the deeds to be executed by them as aforesaid, the lord chief justice of the Court of Common Pleas at Westminster shall from time to time appoint such proper persons as he shall think fit, for every county, riding, division, soke or place for which there may be a clerk of the peace, to be perpetual commissioners for taking such acknowledgments, and such commissioners shall be removable by and at the pleasure of the said lord chief justice; and lists of the names of such commissioners for the time being, with the names of their places of residence, and the counties, ridings, divisions, sokes or places for which they shall be respectively appointed to act, shall from time to time be made out and be kept by the officer of the Court of Common Pleas at Westminster with whom the certificates of the acknowledgments by married women are to be lodged as hereinafter mentioned; and such officer shall from time to time transmit, without fee or reward, to the clerk of the peace for each county, riding, division, soke or place, or his deputy, a copy of the list to be so from time to time made out for that county, riding, division, soke or place, and such officer shall deliver a copy, signed by him, of the list for the time being for any county, riding, division, soke or place, to any person applying for the same; and the clerk of the peace for each county, riding, division, soke or place, or his deputy, shall deliver a copy, signed by him, of the list last transmitted to him as aforesaid to any person applying for the same."

Sect. 82. "Provided always and be it further enacted, that any person appointed commissioner for any particular county, riding, division, soke or

place, shall be competent to take the acknowledgment of any married woman wheresoever she may reside, and wheresoever the lands or money in respect of which the acknowledgment is to be taken may be."

Sect. 83. "And be it further enacted, that in those cases where, by reason of residence beyond seas, or ill health, or any other sufficient cause, any married woman shall be prevented from making the acknowledgment required by this act before a judge, or a master in chancery, or any of the perpetual commissioners to be appointed as aforesaid, it shall be lawful for the Court of Common Pleas at Westminster, or any judge of that court, to issue a commission specially appointing any persons therein named to be commissioners to take the acknowledgment by any married woman to be therein named of any such deed as aforesaid: Provided always, that every such commission shall be made returnable within such time, to be therein expressed, as the said court or judge shall think fit."

Sect. 84. "And be it further enacted, that when a married woman shall acknowledge any such deed as aforesaid, the judge, master in chancery, or commissioners taking such acknowledgment, shall sign a memorandum, to be indorsed on or written at the foot or in the margin of such deed, which memorandum, subject to any alteration which may from time to time be directed by the Court of Common Pleas, shall be to the following effect, *videlicet*,

'This deed marked [*here add some letter or other mark, for the purpose of identification,*] was this day produced before me [*or us*], and acknowledged by — therein named to be her act and deed; previous to which acknowledgment the said — was examined by me [*or us*] separately and apart from her husband, touching her knowledge of the contents of the said deed and her consent thereto, and declared the same to be freely and voluntarily executed by her.'

And the same judge, master in chancery, or commissioners, shall also sign a certificate of the taking of such acknowledgment, to be written or engrossed on a separate piece of parchment; which certificate, subject to any alteration which may from time to time be directed by the Court of Common Pleas, shall be to the following effect, *videlicet*,

'These are to certify, that on the — day of —, in the year one thousand eight hundred and — before me the undersigned Sir *Nicholas Conyngham Tindal*, lord chief justice of the Court of Common Pleas at Westminster, [*or before me Sir James Parke, knight, one of the justices of the Court of King's Bench at Westminster, or before me the undersigned James William Farrer, one of the masters in ordinary of the Court of Chancery, or before us A. B. and C. D. two of the perpetual commissioners appointed for the — for taking the acknowledgments of deeds by married women, pursuant to an act passed in the — year of the reign of his majesty King William the Fourth, intituled An Act [insert the title of this act], or before us the undersigned A. B. and C. D. two of the commissioners specially appointed pursuant to an act passed in the — year of the reign of his majesty King William the Fourth, intituled An act [insert the title of this act], for taking the acknowledgment of any deed*

by — the wife of —,] appeared personally — the wife of —, and produced a certain indenture, marked [*here add the mark*], bearing date the — day of —, and made between [*insert the names of the parties*], and acknowledged the same to be her act and deed: And I [*or we*] do hereby certify that the said — was, at the time of her acknowledging the said deed, of full age and competent understanding, and that she was examined by me [*or us*] apart from her husband, touching her knowledge of the contents of the said deed, and that she freely and voluntarily consented to the same.'

Sect. 85. "And be it further enacted, that every such certificate as aforesaid of the taking of an acknowledgment by a married woman of any such deed as aforesaid, together with an affidavit by some person verifying the same, and the signature thereof by the party by whom the same shall purport to be signed, shall be lodged with some officer of the Court of Common Pleas at *Westminster* to be appointed as hereinafter mentioned; and such officer shall examine the certificate, and see that it is duly signed, either by some judge or master in chancery, or by two commissioners appointed pursuant to this act, and duly verified by affidavit as aforesaid, and shall also see that it contains such statement of particulars as to the consent of the married woman as shall from time to time be required in that behalf; and if all the requisites in this act in regard to the certificate shall have been complied with, then such officer shall cause the said certificate and the affidavit to be filed of record in the said Court of Common Pleas."

Sect. 86. "And be it further enacted, that when the certificate of the acknowledgment of a deed by a married woman shall be so filed of record as aforesaid, the deed so acknowledged shall, so far as regards the disposition, release, surrender or extinguishment thereby made by any married woman whose acknowledgment shall be so certified concerning any lands or money comprised in such deed, take effect from the time of its being acknowledged, and the subsequent filing of such certificate as aforesaid shall have relation to such acknowledgment."

Sect. 87. "And be it further enacted, that the officer of the Court of Common Pleas with whom such certificates as aforesaid shall be lodged, shall make and keep an index of the same, and such index shall contain the names of the married women and their husbands alphabetically arranged, and the dates of such certificates and of the deeds to which the same shall respectively relate, and such other particulars as shall be found convenient; and every such certificate shall be entered in the index as soon as may be after such certificate shall have been filed."

Sect. 88. "And be it further enacted, that after the filing of any such certificate as aforesaid, the officer with whom the certificate shall be lodged shall at any time deliver a copy, signed by him, of any such certificate, to any person applying for such copy; and every such copy shall be received as evidence of the acknowledgment of the deed to which such certificate shall refer."

Sect. 89. "And be it further enacted, that the lord chief justice of the Court of Common Pleas at *Westminster* shall from time to time appoint the person who shall be the officer with whom such certificates as

aforesaid shall for the time being be lodged, and may remove him at pleasure; and the Court of Common Pleas at Westminster shall also from time to time make such orders and regulations as the court shall think fit touching the mode of examination to be pursued by the commissioners to be appointed under this act, and touching the particular matters to be mentioned in such memorandums and certificates as aforesaid, and the affidavits verifying the certificates, and the time within which any of the aforesaid proceedings shall take place, and touching the amount of the fees or charges to be paid for the copies to be delivered by the clerks of the peace or their deputies, or by the officer of the said court, as herein-before directed, and also of the fees or charges to be paid for taking acknowledgments of deeds and for examining married women, and for the proceedings, matters, and things required by this act to be had, done, and executed for completing and giving effect to such acknowledgments and examinations."

Sect. 90. "And be it further enacted, that in every case in which a husband and wife shall, either in or out of court, surrender into the hands of the lord of a manor any lands held by copy of court roll, parcel of the manor, and in which she alone, or she and her husband in her right, may have an equitable estate, the wife shall, upon such surrender being made, be separately examined by the person taking the surrender in the same manner as she would have been if the estate to which she alone, or she and her husband in her right, may be entitled in such lands, were an estate at law instead of a mere estate in equity; and every such surrender, when such examination shall be taken, shall be binding on the married woman, and all persons claiming under her; and all surrenders heretofore made of lands similarly circumstanced, where the wife shall have been separately examined by the person taking the surrender, are hereby declared to be good and valid."

Sect. 91. "Provided always and be it further enacted, that if a husband shall, in consequence of being a lunatic, idiot, or of unsound mind, and whether he shall have been found such by inquisition or not, or shall from any other cause be incapable of executing a deed, or of making a surrender of lands held by copy of court roll, or if his residence shall not be known, or he shall be in prison, or shall be living apart from his wife, either by mutual consent or by sentence of divorce, or in consequence of his being transported beyond the seas, or from any other cause whatsoever (u), it shall be lawful for the Court of Common Pleas at Westminster, by an order to be made in a summary way upon the application of the wife, and upon such evidence as to the said court shall seem meet, to dispense with the concurrence of the husband in any case in which his concurrence is required by this act or otherwise; and all acts, deeds, or surrenders to be done, executed, or made by the wife in pursuance of such order, in regard to lands of any tenure, or in regard to money subject to be invested in the purchase of lands, shall be done, executed, or made by her in the same manner as if

(u) See *Ex parte Ann Shirley*, 5 Bing. Scott, N. C. 592; ante, pt. 1, p. 133, n. 226; 7 Dowl. P. C. 258; *Re Bruce*, 3 (g).

she were a feme sole, and when done, executed, or made by her shall (but without prejudice to the rights of the husband as then existing independently of this act) be as good and valid as they would have been if the husband had concurred: provided always, that this clause shall not extend to the case of a married woman where under this act the lord high chancellor, lord keeper, or lords commissioners for the custody of the great seal, or other the person or persons intrusted with the care and commitment of the custody of the persons and estates of persons found lunatic, idiot, and of unsound mind, or his majesty's High Court of Chancery, shall be the protector of a settlement in lieu of her husband."

Sect. 92. "And be it further enacted, that this act shall not extend to Ireland, except where the same is expressly mentioned."

Sect. 93. "And be it further enacted, that this act or any part thereof, may be altered, varied, or repealed by any act or acts to be passed in the present session of parliament."

3 & 4 WILL. IV. c. 104.

"An act to render freehold and copyhold estates assets for the payment of simple and contract debts."

"Whereas it is expedient that the payment of the debts of all persons should be secured more effectually than is done by the laws now in force;" "be it therefore enacted by," &c. "that from and after the passing of this act, when any person shall die seized of or entitled to any estate or interest in lands, tenements, or hereditaments, corporeal or incorporeal, or other real estate whether freehold, customaryhold, or copyhold, which he shall not by his last will have charged with or devised subject to the payment of his debts, the same shall be assets to be administered in courts of equity for the payment of the just debts of such persons, as well debts due on simple contract as on specialty; and that the heir or heirs at law, customary heir or heirs, devisee or devisees of such debtor, shall be liable to all the same suits in equity at the suit of any of the creditors of such debtor, whether creditors by simple contract or by specialty, as the heir or heirs at law, devisee or devisees of any person or persons who died seized of freehold estates, was or were before the passing of this act liable to in respect of such freehold estates at the suit of creditors by specialty in which the heirs were bound: provided always, that in the administration of assets by courts of equity under and by virtue of this act, all creditors by specialty in which the heirs are bound, shall be paid the full amount of the debts due to them before any of the creditors by simple contract, or by specialty in which the heirs are not bound, shall be paid any part of their demands (x)."

(x) The effect of this act, (and of 47 Geo. 3, c. 74, ante, pt. 1, pp. 89, 90), was to make the heir or devisee personally liable to the amount of the assets devised or descended, and not to charge the real estate;

Spackman v. Timbrell, 8 Sim. 253. Vide also 1 Keen, 577, in Shaw v. Borrer; 4 Myl. & Cr. 268, in Ball v. Harris; Evans v. Brown, 5 Beav. 114.

3 & 4 WILL. IV. c. 106.

“ An act for the amendment of the law of inheritance.”

“ Be it enacted by,” &c. “ that the words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this act, except where the nature of the provision or the context of the act shall exclude such construction, be interpreted as follows, (that is to say,) the word ‘land’ shall extend to manors, advowsons, messuages, and all other hereditaments, whether corporeal or incorporeal, and whether freehold or copyhold, or of any other tenure, and whether descendible according to the common law, or according to the custom of gavelkind or borough-english, or any other custom, and to money to be laid out in the purchase of land, and to chattels and other personal property transmissible to heirs, and also to any share of the same hereditaments and properties or any of them, and to any estate of inheritance, or estate for any life or lives, or other estate transmissible to heirs, and to any possibility, right, or title of entry or action, and any other interest capable of being inherited, and whether the same estates, possibilities, rights, titles and interests, or any of them, shall be in possession, reversion, remainder, or contingency; and the words ‘the purchaser’ shall mean the person who last acquired the land otherwise than by descent, or than by any escheat, partition, or inclosure, by the effect of which the land shall have become part of or descendible in the same manner as other land acquired by descent; and the word ‘descent’ shall mean the title to inherit land by reason of consanguinity, as well where the heir shall be an ancestor or collateral relation, as where he shall be a child or other issue; and the expression ‘descendants’ of any ancestors shall extend to all persons who must trace their descent through such ancestor; and the expression ‘the person last entitled to land’ shall extend to the last person who had a right thereto, whether he did or did not obtain the possession or the receipt of the rents and profits thereof; and the word ‘assurance’ shall mean any deed or instrument (other than a will) by which any land shall be conveyed or transferred at law or in equity; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and every word importing the masculine gender only shall extend and be applied to a female as well as a male.”

Sect. 2. “ And be it further enacted, that in every case descent shall be traced from the purchaser; and to the intent that the pedigree may never be carried further back than the circumstances of the case and the nature of the title shall require, the person last entitled to the land shall, for the purposes of this act, be considered to have been the purchaser thereof, unless it shall be proved that he inherited the same, in which case the person from whom he inherited the same shall be considered to have been the purchaser, unless it shall be proved that he inherited the same; and in like manner the last person from whom the land shall be proved to have been inherited, shall in every case be considered to have been the purchaser, unless it shall be proved that he inherited the same.”

Sect. 3. " And be it further enacted, that when any land shall have been devised by any testator who shall die after the 31st day of December, 1833, to the heir or to the person who shall be the heir of such testator, such heir shall be considered to have acquired the land as a devisee, and not by descent; and when any land shall have been limited, by any assurance executed after the said 31st day of December, 1833, to the person or to the heirs of the person who shall thereby have conveyed the same land, such person shall be considered to have acquired the same as a purchaser by virtue of such assurance, and shall not be considered to be entitled thereto as his former estate or part thereof (y)."

Sect. 4. " And be it further enacted, that when any person shall have acquired any land by purchase under a limitation to the heirs or to the heirs of the body of any of his ancestors, contained in an assurance executed after the said 31st day of December, 1833, or under a limitation to the heirs or to the heirs of the body of any of his ancestors, or under any limitation having the same effect, contained in a will of any testator who shall depart this life after the said 31st day of December, 1833, then and in any of such cases such land shall descend, and the descent thereof shall be traced as if the ancestor named in such limitation had been the purchaser of such land."

Sect. 5. " And be it further enacted, that no brother or sister shall be considered to inherit immediately from his or her brother or sister, but every descent from a brother or sister shall be traced through the parent."

Sect. 6. " And be it further enacted, that every lineal ancestor shall be capable of being heir to any of his issue; and in every case where there shall be no issue of the purchaser, his nearest lineal ancestor shall be his heir in preference to any person who would have been entitled to inherit, either by tracing his descent through such lineal ancestor, or in consequence of there being no descendant of such lineal ancestor, so that the father shall be preferred to a brother or sister, and a more remote lineal ancestor to any of his issue, other than a nearer lineal ancestor or his issue."

Sect. 7. " And be it further enacted and declared, that none of the maternal ancestors of the person from whom the descent is to be traced, nor any of their descendants, shall be capable of inheriting until all his paternal ancestors and their descendants shall have failed; and also that no female paternal ancestor of such person, nor any of her descendants, shall be capable of inheriting until all his male paternal ancestors and their descendants shall have failed; and that no female maternal ancestor of such person, nor any of her descendants, shall be capable of inheriting until all his male maternal ancestors and their descendants shall have failed."

Sect. 8. " And be it further enacted and declared, that where there shall be a failure of male paternal ancestors of the person from whom the descent is to be traced, and their descendants, the mother of his more remote male paternal ancestor, or her descendants, shall be the heir or heirs of

(y) Vide *Strickland v. Strickland*, 10 Sim. 374.

such person, in preference to the mother of a less remote male paternal ancestor, or her descendants; and where there shall be a failure of male maternal ancestors of such person, and their descendants, the mother of his more remote male maternal ancestor, and her descendants, shall be the heir or heirs of such person, in preference to the mother of a less remote male maternal ancestor, and her descendants."

Sect. 9. "And be it further enacted, that any person related to the person from whom the descent is to be traced by the half blood, shall be capable of being his heir; and the place in which any such relation by the half blood shall stand in the order of inheritance, so as to be entitled to inherit, shall be next after any relation in the same degree of the whole blood and his issue, where the common ancestor shall be a male, and next after the common ancestor where such common ancestor shall be a female, so that the brother of the half blood on the part of the father shall inherit next after the sisters of the whole blood on the part of the father and their issue, and the brother of the half blood on the part of the mother shall inherit next after the mother."

Sect. 10. "And be it further enacted, that when the person from whom the descent of any land is to be traced shall have had any relation who, having been attainted, shall have died before such descent shall have taken place, then such attainder shall not prevent any person from inheriting such land who would have been capable of inheriting the same by tracing his descent through such relation, if he had not been attainted, unless such land shall have escheated in consequence of such attainder before the 1st day of January, 1834."

Sect. 11. "And be it further enacted, that this act shall not extend to any descent which shall take place on the death of any person who shall die before the said 1st day of January, 1834."

Sect. 12. "And be it further enacted, that where any assurance executed before the said 1st day of January, 1834, or the will of any person who shall die before the same 1st day of January, 1834, shall contain any limitation or gift to the heir or heirs of any person, under which the person or persons answering the description of heir shall be entitled to an estate by purchase, then the person or persons who would have answered such description of heir if this act had not been made, shall become entitled by virtue of such limitation or gift, whether the person named as ancestor shall or shall not be living on or after the said 1st day of January, 1834."

4 & 5 WILL. IV. c. 30.

"An act to facilitate the Exchange of Lands lying in Common Fields."

[The first and second sections authorize persons seized or entitled in possession, either in fee, fee tail, or for life, or other estate of freehold, or for years determinable on any life, or for any term of years, whereof one hundred years shall be unexpired, and the guardian, trustee, &c., of persons under disability, to grant and convey in exchange land lying intermixed and

dispersed in common fields, meadows or pastures, for other pieces of land, either lying therein, or being part of the inclosed lands in the same or any adjoining parish, subject to the several provisions subsequently therein contained.]

Sect. 7. " And be it further enacted, that every exchange under the authority of this act shall be made according to the form in the schedule to this act annexed, or as near thereto as the number of parties and the circumstances of the case will admit, and shall, when executed by the respective parties, be valid and effectual in the law to all intents and purposes, without livery of seizin made or taken, or any other act done by any person or party to perfect or complete the same."

Sect. 8. " Provided always and be it further enacted, that whenever any land *held by copy of court roll* shall be exchanged under the authority of this act, the deed of exchange, when executed by the respective parties, shall be produced to the lord of the manor of which the land may be parcel, or to his steward, or to the deputy of such steward, who shall cause the same to be entered on the court rolls of the manor."

Sect. 9. " And be it further enacted, that the fees and charges to be demanded by and paid to any steward of a manor for entering on the court rolls of such manor any deed of exchange or other instrument required by this act to be entered thereon, shall not exceed the sum of sixpence for every law folio of seventy-two words contained in such deed or other instrument."

[*Schedule.*]

" This indenture made the — day of —, in the year —, between *A. B.*, of —, of the one part, and *C. D.* of —, of the other part, Witnesseth, that in pursuance and under the authority of an act passed in the — year of the reign of his majesty King William the Fourth, intituled [*here set forth the title of this act*], the said *A. B.* doth grant and convey all the land comprised in the first schedule hereunder written, marked with the letter A, unto the said *C. D.*, in lieu of and in exchange for the land comprised in the second schedule hereunder written, marked with the letter B, to the end and intent that the land comprised in the first schedule may be held and enjoyed by the said *C. D.*, and the person or persons who, for the time being, shall be entitled thereto, and be and become subject to such and the same uses, trusts, powers, conditions, limitations, restrictions, charges and incumbrances as the land comprised in the second schedule now is or may be subject or liable to: And this indenture further witnesseth, that in pursuance of the said act, the said *C. D.* doth grant and convey all the land comprised in the second schedule hereunder written, marked with the letter B, unto the said *A. B.*, in lieu of and in exchange for the land comprised in the first schedule hereunder written, marked with the letter A, to the end and intent that the land comprised in the second schedule may be held and enjoyed by the said *A. B.*, and the person or persons who for the time being shall be entitled thereto, and be

and become subject to such and the same uses, trusts, powers, conditions, limitations, restrictions, charges and incumbrances, as the land comprised in the first schedule now is or may be subject or liable to. In witness &c.

Schedule A, containing the land conveyed by *A. B.* to *C. D.*

Schedule B, containing the land conveyed by *C. D.* to *A. B.*

Witness, *E. F.*
G. H.

A. B. (L. S.)
C. D. (L. S.)"

4 & 5 VICT. c. 35.

"An act for the commutation of certain manorial rights in respect of lands of copyhold and customary tenure, and in respect of other lands subject to such rights; and for facilitating the enfranchisement of such lands, and for the improvement of such tenure (x)."

"Whereas it is expedient to provide the means for an adequate compensation for the rents, fines and heriots payable to the lords of manors in respect of lands of copyhold and customary tenure, and in respect of other lands subject to such payments or any of them (a), and for facilitating the VOLUNTARY enfranchisement of such lands, and for improving such tenure; Be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that 'The Tithe Commissioners for England and Wales' for the time being shall be the commissioners for carrying this act into execution; and that, should the same not be fully carried into effect before the duties of the said tithe commissioners shall cease, it shall be lawful in such case for one of her majesty's principal secretaries of state to appoint any number of fit persons to be commissioners to carry this act into execution, in the place of such commissioners so ceasing to act, and at pleasure to remove any one or more of the commissioners so appointed, so that the number of commissioners shall never exceed three; and upon every vacancy in the office of commissioner, some other fit person shall be appointed to the said office in like manner; and until such appointment, it shall be lawful for the remaining commissioners or commissioner to act as if no such vacancy had occurred."

Sect. 2. "And be it enacted, that the commissioners acting in the execution of this act shall be styled 'The Copyhold Commissioners,' and shall have their office in London or Westminster; and they, or any two of them, may sit from time to time, as they deem expedient, as a board of commissioners for carrying this act into execution; and the said commissioners shall cause to be made a seal of the same board, and shall cause to be sealed or stamped therewith all agreements and awards or apportionments

(x) Vide ante, pt. 1, p. 550, n. (j).

(a) Ante, pt. 3, p. 603, n. (c).

confirmed by the said commissioners in pursuance of this act; and all such agreements, awards, apportionments and other instruments proceeding from the said board, or copies thereof, purporting to be sealed or stamped with the seal of the said board, shall be received in evidence without any further proof thereof; and no agreement, award or apportionment shall be of any force, unless the same shall be sealed or stamped as aforesaid."

Sect. 3. "And be it enacted, that the said commissioners shall from time to time give to any one of her majesty's principal secretaries of state such information respecting their proceedings, or any part thereof, as the said principal secretary of state shall require, and shall once in every year send to one of the principal secretaries of state a general report of their proceedings; and every year such general report shall be laid before both houses of parliament within six weeks after the receipt of the same by such principal secretary of state, if parliament be sitting, or if parliament be not sitting, then within six weeks after the next meeting thereof."

Sect. 4. "And be it enacted, that it shall be lawful for the said commissioners from time to time to employ such of the assistant commissioners appointed under the provisions of an act passed in the sixth and seventh years of the reign of his late majesty King William the Fourth, and intituled 'An Act for the Commutation of Tithes in England and Wales,' as they shall see fit, or to appoint a sufficient number of other persons to be assistant commissioners, and also a secretary, assistant secretaries, and all such clerks, messengers and officers, as they shall deem necessary, and to remove such assistant commissioners, secretary, assistant secretaries, clerks, messengers or officers, or any of them, and on any vacancy in any of the said offices to appoint some other person to the vacant office; and the persons so employed or appointed shall assist in carrying this act into execution at such places and in such manner as the said commissioners may direct: Provided always, that the said commissioners shall not appoint more than ten such assistant commissioners to act at any one time, unless the lord high treasurer, or any three or more of the commissioners of her majesty's treasury, of the united kingdom of Great Britain and Ireland, shall in the case of each such additional appointment consent thereto: Provided further, that the number of such clerks, messengers and officers, shall be subject to the like consent."

Sect. 5. "And be it enacted, that no commissioner or assistant commissioner appointed as aforesaid shall, during the continuance of such office, be capable of being elected or of sitting as a member of the House of Commons."

Sect. 6. "And be it enacted, that no commissioner or assistant commissioner, secretary or other officer or person so to be appointed, shall hold his office for a longer period than five years next after the day of the passing of this act, and thenceforth until the end of the then next session of parliament; and after the expiration of the said period of five years and the then next session of parliament, so much of this act as authorizes such appointment shall cease."

Sect. 7. "And be it enacted, that the salaries of the commissioners, the allowance to the assistant commissioners, and the salary of the secretary,

assistant secretaries, clerks, messengers and other officers to be appointed under this act, shall be from time to time regulated by the lord high treasurer, or the commissioners of her majesty's treasury, or any three of them: Provided always, that the salary of a commissioner shall not exceed the sum of two thousand pounds a year, including any salary to which he may be entitled under the said act of his late majesty King William the Fourth, nor the allowance to an assistant commissioner the sum of three pounds for every day that he shall be actually employed or travelling in the performance of the duties of his office, including any allowance to which he may be entitled under the said act; nor the salary of the secretary the sum of eight hundred pounds a year; and that the salaries of the assistant secretaries, clerks, messengers and other officers, shall be in fit proportion: Provided also, that the said lord high treasurer, or commissioners of her majesty's treasury, may allow to any commissioner or assistant commissioner, secretary, assistant secretary, clerk, messenger or other officer, any such reasonable travelling or other expenses as may have been incurred by him in the performance of his duties under this act, in addition to his salary or allowance respectively."

Sect. 8. "And be it enacted, that the salaries, allowances and travelling and other expenses of the commissioners, assistant commissioners, secretary, assistant secretary, clerks, messengers and officers as aforesaid, and all other incidental expenses of carrying this act into execution not herein otherwise provided for, shall be paid by the lord high treasurer, or the commissioners of her majesty's treasury, out of the consolidated fund of the united kingdom of Great Britain and Ireland."

Sect. 9. "And be it enacted, that every commissioner shall, before he shall enter upon the execution of his office, make the following declaration before one of the judges of her majesty's Courts of Queen's Bench or Common Pleas, or one of the barons of the Court of Exchequer, (that is to say,)

'I [A. B.] do solemnly declare, that I will faithfully, impartially and honestly, according to the best of my skill and judgment, fulfil all the powers and duties of a commissioner under an act passed in the fourth year of the reign of Queen Victoria, intituled [*here set forth the title of this act*].' And that every such assistant commissioner shall, before he shall enter upon the execution of his office, make the like declaration, (substituting the words 'Assistant Commissioner' for the word 'Commissioner,') before such judge or baron, or before any two justices of the peace for the county, riding, division, liberty or jurisdiction, wherein such assistant commissioner shall be resident at the time of his appointment, or before a master extraordinary in her majesty's High Court of Chancery; and the appointment of every such commissioner and assistant commissioner, with the time when, and the name or names of the judge, baron, justices or master extraordinary before whom he shall have made the declaration as aforesaid, shall be forthwith published in the London Gazette."

Sect. 10. "And be it enacted, that the said commissioners may delegate to their assistant commissioners, or to any one or more of them, such of the powers hereby given to the said commissioners as the said commis-

sioners shall think fit, except the power of confirming agreements, awards or apportionments, or to frame forms of agreements and other instruments, as hereinafter provided, or to do any act herein required to be done under the seal of the said commissioners; and the powers so delegated shall be exercised under such regulations as the said commissioners shall direct: and the said commissioners may at any time recall or alter all or any of the powers delegated as aforesaid, and, notwithstanding the delegation thereof, may act as if no such delegation had been made: and all acts done by any such assistant commissioner in pursuance of such delegated powers shall be obeyed by all persons as if they had proceeded from the said commissioners, and the nonobservance thereof shall be punishable in like manner."

Sect. 11. "And be it enacted, that whenever the lord or tenant of a manor, or any person interested in any question or right connected with any commutation or enfranchisement under this act, shall be a minor, idiot, lunatic, feme covert, or under any other legal disability, or shall be beyond the seas, the guardian, trustees, committee of the estate, husband or attorney of such person respectively, or in default thereof, or in case the party interested shall be unknown or not ascertained, then such person as may be nominated for that purpose by the said commissioners under their hands and seal, after due inquiry shall have been made by them as to the fitness of such person, shall for the purposes of this act be substituted in the place of such lord, tenant, or other person: Provided always, that if any lord, tenant or other person interested as aforesaid, shall be a trustee for charitable purposes, and the annual value of the charity estate shall exceed fifty pounds, such trustee shall not sign any agreement or power of attorney, or join in any proceedings under this act, without an order of her majesty's High Court of Chancery, to be applied for by petition; but on such order being obtained, or if the annual value of the charity estate shall not exceed fifty pounds, such trustee may sign any agreement or power of attorney, and otherwise join in any proceedings under this act, as if he had been beneficially interested in such charity estate."

Sect. 12. "And be it enacted, that it shall be lawful for any lord or tenant of a manor, or any other person interested in any commutation under this act, by a power of attorney given in writing under his hand, or in the case of a corporation aggregate under the common seal of such corporation, from time to time to appoint an agent to act for him in carrying into execution the provisions of this act; and all things which by this act are directed or authorized to be done by or in relation to any person, may be fully done by or in relation to the agent so duly authorized of such person; and every such agent shall have full power, in the name and on behalf of his principal, to concur in and execute any agreement, and vote in any question arising out of the execution of this act, and make any inspection, and sign any notice of objection under the provisions of this act; and every person shall be bound by the acts of any such agent, according to the authority committed to him, as fully as if the principal of such agent had so acted; and the power of attorney under which the agent shall have acted, or a copy thereof authenticated by the signature of two credible wit-

nesses, shall, at the first meeting under the act attended by such attorney under such power, or whenever requested by the chairman or by any other interested party present at such meeting, be delivered to the chairman for the time being, and the same or any like copy shall be appended to every agreement executed by any such attorney, and shall be sent with it to the office of the said commissioners as hereinafter provided: Provided always, that if any person having made such appointment shall deliver notice in writing or under a common seal, (as the case may require,) of the revocation thereof to the chairman at any such meeting, no act which shall be done by the person so appointed after the delivery of such notice, without a fresh appointment, shall bind the principal: And any such power may be in the form following:

‘ Manor of —, in the } I, A. B., of &c., lord [or copyholder, custom-
county of —. } ary tenant, or freeholder, *as the case may be,*] of
the said manor, do hereby appoint C. D. of &c., to be my lawful attorney,
to act for me in all respects as if I myself were present and acting in the
execution of an act passed in the fourth year of the reign of her present
majesty, intituled [*here insert the title of this act*]. Dated this — day
of —, one thousand eight hundred and —.

(Signed)

A. B.’ ”

Sect. 13. “ And be it enacted, that any lord or lords of any manor whose interest shall not be less than one-fourth of the whole annual value of such manor, or any tenant or tenants of any manor to the number of ten, or when there shall not be so many tenants as ten, then one-half of the tenants of such manor, may call a meeting of the lords and tenants of such manor, by notice thereof in writing under his or their hands, to be affixed at least twenty-one days before such meeting on the principal outer door of the church of the parish within the limits of which the said manor or the greater part thereof in value extends, or on the door or on some conspicuous part of some house or building wherein the courts for the said manor are usually held, and to be twice at least within such twenty-one days inserted in some newspaper (or once in each of two newspapers published in successive weeks) generally circulated in the county within which the said manor or the greater part thereof in value extends, for the purpose of making an agreement for the general commutation of the rents, fines and heriots thereafter to become due in respect of lands holden of such manor, and of the lord’s rights in timber; and every lord and tenant attending such meeting shall bear his own expenses of attendance; and the lord and tenants who shall be present at any such meeting called as aforesaid, such tenants not being less in number than three-fourths of the tenants of such manor, and the interest of the lord and the interest of the tenants in the manor and lands respectively not being less than three-fourths of the interest in the value thereof respectively, computing the interest of tenants as hereinafter is provided, may proceed to make and execute such an agreement as is hereinafter mentioned for the commutation of the rents, fines (b) and heriots (c)

(b) As to fines on admittance, vide pt. 1, p. 317 et seq.

(c) As to heriots, vide pt. 1, p. 369 et seq.

thereafter to become due in respect of the lands holden of the said manor, and of the lord's rights in timber (*d*); and if expressly agreed between such lord and tenants, the commutation may be made to extend to rights in mines and minerals (*e*), but otherwise shall not extend to or affect such rights; and thereupon such agreement shall be reduced into writing, and a memorandum or minute thereof shall be signed by the persons so agreeing to such commutation, or by their respective agents."

Sect 14. " And be it enacted, that such agreement for a commutation of the rights of the lord may be for the payment of an annual sum by way of rent-charge, and of a small fixed fine upon death or alienation, which shall in no case exceed the sum of five shillings, such rent-charge to commence, either in whole or in part, according as the said commissioners shall direct, from the date hereinafter mentioned (except where otherwise directed by the said commissioners), and to be valued and variable (when such rent-charge shall exceed twenty shillings) according to the price of corn, in like manner as is mentioned and provided with regard to the tithe commutation rent-charge in and by the said act for the commutation of tithes in England and Wales; and the amount of every such rent-charge may be specifically stated in such agreement, or separate rent-charges may be therein agreed upon between the lord and any one or more tenants, parties to the agreement, or the agreement may provide that the entire rent-charge, though stated therein, shall be subject to increase or diminution by the valuers to be appointed as hereinafter mentioned to such an amount per centum as shall be therein expressed, or that such separate rent-charges as aforesaid shall be subject to increase or diminution to a given amount per centum, in certain events to be specified in the agreement; and the agreement may also determine the apportionment for each tenant, or it may provide that the entire rent-charge, or the apportionment thereof, shall be fixed by such valuers, subject to the approbation of the said commissioners; and it may be agreed that so much of the rent-charge, to be apportioned as aforesaid in respect of the lands of any tenant, as shall be in lieu of fines, or other manorial rights to which such tenant would not be liable thereafter during his tenancy, shall not commence until the period of the next act or event on which a fine or such other manorial right would have become payable or due, and that the amount of such rent-charge shall be then increased accordingly; but such agreement shall not fix the time for the commencement of the rent-charge to be apportioned in respect of the lands of any tenant who shall not be party to such agreement; and all other provisions may be made for carrying into execution the intention of the parties and of this act, so that nothing in such agreement contained (unless every tenant included therein shall be a party thereto) shall exclude or prevent the exercise of the powers hereinafter contained for apportioning the rent-charge according to the particular circumstances of each tenement, and for the relief of tenants for life and other persons in the cases hereinafter provided for; and such agreement may fix a scale of fees to be payable to the steward from and after the confirmation of the apportionment, but so never-

(*d*) As to relative rights of the lord and tenant in timber, vide pt. 1, p. 419 et seq.

(*e*) As to mines, vide pt. 1, p. 429 et seq.

theless as not to affect the interests of any steward in office at the time of the passing of this act who shall hold his office for life or during good behaviour, or of any steward of a manor so in office as aforesaid where the usage shall have been such as in the opinion of the said commissioners to lead to a just expectation that the steward will hold his office during his life or good behaviour; and such agreement may provide for the costs of the proceedings under this act, subject to the approbation of the said commissioners: Provided always, that in case of doubt or difference as to the sufficiency of interest of the parties to any such agreement, the decision of the said commissioners thereon shall be conclusive; and every agreement so made and executed, and confirmed in manner hereinafter mentioned, shall be binding on all persons interested in such manor or lands."

Sect. 15. "And be it enacted, that such agreement for a commutation of the rights of the lord as aforesaid may also be for the payment of a fine on death or alienation, or at any fixed period or periods to be agreed upon by the parties, every such fine to be fixed by the agreement, or to be subject to increase or diminution by the valuers, to be appointed as hereinafter mentioned, to such an amount per centum as shall be expressed in such agreement, but in either case to be valued in bushels of wheat, barley and oats, in the same manner as the tithe commutation rent-charge, and to be subject, in like manner as such rent-charge, to variation according to the prices ascertained by the advertisement provided for by the said act for the commutation of tithes in England and Wales, to be published next before the time of the happening of the act or event on which the fine shall become payable (f)."

Sect. 16. "And be it enacted, that the said lord and tenants present at such meeting shall elect a chairman, (the vote of the lord being reckoned as equal to one-third of the whole number of votes, and the votes of the tenants being reckoned individually,) who shall forthwith proceed to ascertain the number and interest of the lord and tenants then present in person or by their agents; and in case it shall thereupon appear that the persons present at such meeting are not sufficient in number and interest, or a sufficient portion are not willing to make and execute such an agreement as shall be binding on all persons interested therein, it shall be lawful, notwithstanding, for any number of the persons present to make and execute a provisional agreement of the like form and tenor; and every such provisional agreement which shall be executed within six calendar months from the day of such meeting by such persons as would have been sufficient in number and interest to make a binding agreement at such meeting, shall be as binding as if the same had been sufficiently executed at such meeting."

(f) By 6 & 7 Vict. c. 23, s. 1, post, any commutation or enfranchisement under this act may be made, either wholly or in part, for the consideration of a conveyance of lands parcel of the same manor as the lands commuted, and subject to the same uses and trusts as those lands, or a right to mines or minerals under such lands, or a

right to waste:—and by 7 & 8 Vict. c. 55, s. 5, any commutation or enfranchisement may be made, wholly or in part, for the consideration of a conveyance of lands, or of any right to mines or minerals, though not parcel of or situate under the lands of the same manor as the lands to be commuted or enfranchised. *Vide the acts, post.*

Sect. 17. "And be it enacted, that the proportional interest of the tenants, so far as relates to their power to make such agreement or provisional agreement, or to appoint valuers, or to give any notice to the said commissioners or assistant commissioners, as hereinafter provided, shall be computed in manner hereinafter mentioned, that is to say, the interest of every tenant liable to fines arbitrary or uncertain in amount shall be estimated according to the proportional sum at which their lands shall be rated to the relief of the poor in the parish or place wherein the same are situated, and if any lands shall not be distinctly rated, then in respect of such lands according to the rules by which property of the same kind is in the said parish rated to the relief of the poor; and when such rating cannot be ascertained, then the interest in respect thereof shall be estimated at such proportion, not exceeding two-thirds of the last fine arbitrary paid on admission to the said lands, as the chairman at the said meeting shall consider nearest in amount to the yearly value of the same lands; the interest of tenants liable to fines certain shall be estimated according to such rule as shall be specially made for the occasion by the said commissioners on the application of the lord or tenants by whom the meeting shall have been called, or, for want of such rule, as if the annual value of their respective lands were one-half of the amount of such fine certain; the interest of tenants liable to heriots in kind shall in respect of such liability be estimated according to such rate as shall be specially made for the occasion by the said commissioners on such application as aforesaid, or for want of such rule, at one-fifth of the annual value of their respective lands, as nearly as the same can be estimated by the chairman at any such meeting; and the interest of no person shall be computed in respect of a copyhold estate who has not been admitted tenant thereof according to the custom of the manor, or who has made an absolute surrender of all his estate and interest therein; and it shall be lawful for the said commissioners to make special rules respecting the computation of the interests of tenants liable to fines certain, heriots, rights in timber, and other manorial rights (if any) which may be the subjects of any proposed commutation, on the application or with the consent of a majority of the parties interested, and previous to the execution of any agreement, and such rules shall have the same force as if made by this act."

Sect. 18. "And be it enacted, that in case an adjournment of the said meeting shall for any cause be desired by a majority in number of the persons attending such meeting in person or by attorney as aforesaid, the chairman shall adjourn the meeting to any time and place then by him to be declared, and so from time to time in case the same shall be in like manner desired by a majority in number of the persons attending such meeting as aforesaid; and notice of every such adjourned meeting shall be given under the hand of the chairman, and shall be affixed in a conspicuous place on the outside of the building in which such meeting, or the last adjournment thereof, shall have been holden, and shall be once advertised in a newspaper as aforesaid; and the like order of proceeding shall be observed at every such adjourned meeting; and every thing done at any such adjourned meeting shall be as valid as if done at the original meeting."

Sect. 19. " And be it enacted, that every such agreement shall bear date on the day on which the first signature is attached thereto, or to the memorandum or minute thereof, and shall be in such form as the commissioners shall from time to time direct, or to the like effect."

Sect. 20. " And be it enacted, that the said commissioners shall frame and cause to be printed, so soon as conveniently may be after their appointment or beginning to act, forms of notices and agreements, and such other instruments as in their judgment will further the purposes of this act, and supply all or any of such forms to any person or persons requiring the same, or to whom the said commissioners shall think fit to send the same, for the use of any lord or copyholder or other tenant desirous of putting this act into execution."

Sect. 21. " And be it enacted, that if any action or suit shall be pending touching the right to or amount of any fines, heriots or other manorial rights, or touching the situation or boundary of any manor or lands, or if any difference shall arise whereby the making and executing of any such agreement, or of any enfranchisement under this act, shall be hindered, it shall be lawful for the lord and tenants or claimants, being parties to such action, suit or difference, to submit the same to reference by any writing under their respective hands, containing an agreement that such submission shall be made a rule of any of her majesty's courts of law, upon such terms of reference as the said parties may agree upon ; and the decision of the arbitrator or arbitrators named in the said reference shall be final and conclusive on all persons ; and when such arbitrator or arbitrators shall be appointed for the purpose of determining any unknown or disputed boundary of any manor or lands, he or they shall and may have and exercise all the powers which may be exercised by any referee appointed under and by virtue of the provisions of an act passed in the third year of the reign of his late majesty, King William the Fourth, intituled ' An Act to authorize the identifying of Lands and other Possessions of certain Ecclesiastical and Collegiate Corporations : ' Provided nevertheless, that no person, being owner of an estate in a manor or lands less in the whole than an immediate estate of fee simple or fee tail, or corresponding copyhold estate, shall be empowered to submit to any such reference, so as to bind any person in reversion, remainder or expectancy, without the consent of the said commissioners ; and that it shall be lawful for the said commissioners, if they shall think fit so to do, but not otherwise necessary, to direct that any person in reversion, remainder or expectancy, whom they shall deem to be interested therein, shall be made a party to such reference."

Sect. 22. " Provided always and be it enacted, that in every case in which any manor or lands shall be held under any archdeacon, bishop, dean, dean and chapter, archdeacon, or any ecclesiastical or other corporation, or any body politic, and in every case in which any such person, ecclesiastical or other corporation, or body politic, or patron of any living, shall be interested in any manor or lands to the extent of one-third of the value thereof, computed as to such lands as aforesaid, or if it shall appear to the said commissioners that the interests of such person, ecclesiastical or other corporation, or body politic, would be affected by the commutation or en-

franchisement under this act, no agreement to be made and executed under this act shall be deemed to be executed by the said lord and tenants, unless the consent of such person, ecclesiastical or other corporation, or body politic, shall be given under the hand or seal of the person, ecclesiastical or other corporation, or body politic, or patron of such living giving the same; and such consent shall be annexed to the agreement for commutation or enfranchisement, and taken as part thereof."

Sect. 23. "And be it enacted, that every such agreement, as soon as may be after it shall have been executed by the lord and tenants to the number and value as aforesaid, shall be sent by the chairman of the meeting, or by the person in whose custody it shall then be, to the office of the said commissioners; and the said commissioners, by themselves or by some assistant commissioner, shall cause inquiry to be made, and shall require such proof as will be satisfactory to them, whether or not it ought to be confirmed; and if they shall be satisfied that it ought to be confirmed, the said commissioners shall confirm the agreement under their hands and seal, and shall add to such agreement the date of the confirmation, and shall publish the fact of such confirmation, and the date thereof, within the manor, in such way as they shall deem fit; and every such confirmed agreement shall be binding on all persons interested in the said manor, and on all persons interested in the said lands, and shall not be liable to be invalidated by reason of any doubt or question as to the sufficiency in the number and interest of the parties entering into such agreement: Provided always, that it shall be lawful for the said commissioners, by themselves or by some assistant commissioner, at their discretion, if the circumstances of the case shall in their opinion require it, to direct that the rent-charge to be paid by any particular tenant or tenants shall not commence until the period of the next act or event on which the fine or other manorial right for which such rent-charge shall be commuted would have become due and payable, and that the amount of such rent-charge shall be then increased in such proportion as the said commissioners or assistant commissioner shall think proper."

Sect. 24. "And be it enacted, that at the said meeting for commutation, or at some adjournment thereof, or at some other meeting to be called in like manner, either before or after the confirmation of the agreement, such agreement not being an imperfect provisional agreement, valuers shall be appointed, in manner hereinafter mentioned, for the purpose of making such valuations, apportionments and schedules as shall be required for carrying the said agreement into execution; and in case such commutation shall be agreed to be made in consideration of a rent-charge payable to the lord, and fixed by the agreement, the tenants present at such meeting shall appoint a valuer or valuers; and in case the majority in respect of number and the majority in respect of value (computed as aforesaid) shall not agree upon the appointment, then they shall appoint two or such other even number of valuers as shall be then agreed on by such tenants, half of such number of valuers to be chosen by a majority in respect of number, and the other half by a majority in respect of value (computed as aforesaid)

of the tenants then present in person or by their agents; but in case such commutation shall be in consideration of a rent-charge, the amount whereof shall not be fixed by the agreement, but shall be liable to increase or diminution by the valuers, or shall be left to be determined by them, with the approbation of the said commissioners, then and in either of the said cases one half of the number of valuers shall be appointed by the lord, or the majority of the lords in value, and the other half by the tenants in manner aforesaid, or such respective parties may concur in the appointment of one or more valuer or valuers; and any question which may arise as to the regularity of the appointment of such valuer or valuers shall be decided by the said commissioners."

Sect. 25. " And be it enacted, that as soon as may be after the choosing such valuers, and after the confirmation of the said agreement, the said valuers shall apply to the said commissioners for instructions as to the duties to be performed by them pursuant to such agreement, and having received such instructions shall proceed to make and send in to the said commissioners such valuations, apportionments and schedules as they shall require; and whenever an even number of valuers shall be chosen, it shall be lawful for the said commissioners, by any writing under their hands and seal, (to be communicated either together with or as soon as conveniently may be after the said instructions,) to appoint a fit and proper person to be an umpire between such valuers; and the decision of the umpire on the questions in difference between the valuers shall be binding on them respectively, and shall be adopted by them respectively in their valuation."

Sect. 26. " And be it enacted, that the said valuers and umpires respectively, (if as to such umpires it shall become necessary for them to act respectively,) and their agents or servants, at all reasonable times, may, on producing an authority under the hand and seal of the said commissioners or assistant commissioners, enter upon any of the lands and premises affected by such agreement, and make an admeasurement, plan and valuation or inspection of the same, without being subject to any action or molestation for so doing: Provided always, that no valuer or umpire shall be capable of acting, until he shall have made and subscribed before the said commissioners or some assistant commissioner, or a justice of the peace or master extraordinary in chancery, a solemn declaration to the same purport and effect as the declaration hereinbefore directed to be made by the said commissioners, substituting only the proper description of the office held by such person for that of a commissioner; which declaration it shall be lawful for the said commissioners, assistant commissioner, justice of the peace or master extraordinary, to administer; and every such declaration so made and subscribed shall be countersigned by the person before whom the same shall have been made, and shall be sent by him to the office of the said commissioners."

Sect. 27. " And be it enacted, that for the purpose of enabling the said valuers to make such valuations, apportionments and schedules, and otherwise to facilitate commutations under this act, the steward of the manor for the time being shall, on request by the said valuers, or any of them re-

spectively, or the chairman of any meeting or adjournment thereof, or of any three tenants having signed the notice of an intended meeting, make out, so far as his information may enable him, within such period and in such manner as the said commissioners shall direct, a correct statement in writing of the several tenants of the said manor, and of the respective lands to which they shall respectively stand admitted for life or otherwise, or which they shall hold subject to fines, heriots or other manorial rights, and of the amount to which the same lands are rated to the relief of the poor, so far as he can distinguish or estimate the same, and of the amounts received by the lords on account of the three last heriots in respect of any such lands, and of any other information which the said commissioners shall from time to time direct, and which as such steward he can procure and produce without prejudice to the rights and interests of the lord of the said manor; and the said steward shall produce the said statement for inspection at any such meeting or adjournment thereof, on being paid for the same as hereinafter provided, and shall deliver to or allow any extracts thereof as to such rating to be taken by the chairman of such meeting, and shall, upon request by the said valuers, and being paid as aforesaid, deliver to them respectively a true copy of such statement, or the parts thereof required by them; and for preparing such statement, the said steward shall receive from the person requiring the same such a remuneration as shall have been agreed upon, or, in case of difference, such a sum as the said commissioners shall under their hands and seal order and direct, and for copies or extracts thereof the sum of fourpence for every seventy-two words; and the said steward for the time being, or, if there shall be no steward, the lord, shall within three calendar months after the signature of the said agreement, or whenever required by the said commissioners, make out and send to the said commissioners such information and in such form as the said commissioners shall from time to time require, and as the said steward, or, if there shall be no steward, the lord, can procure and produce, without prejudice as aforesaid; and for the purpose of ascertaining the ages of any tenants, it shall be lawful for the steward or lord to apply personally, or by letter sent by post, and addressed to the particular tenant at his usual place of abode, for such information, and every tenant refusing or neglecting for the space of twenty-one days to give such information shall not be entitled to have any amendment made in such schedule by reason of any error the steward may commit in inserting such age, or to object to the apportionment hereinafter mentioned by reason of such mis-statement of age, unless the said commissioners shall see cause otherwise to direct; and any tenant falsely stating his or her age shall forfeit and pay such sum, not exceeding the sum of ten pounds, as the said commissioners shall under their hands order and direct, and which shall be added to the amount to be payable by him or her under the apportionment, and recoverable in like manner, and applied in and towards the costs of apportionment or other costs of commutation as the said commissioners shall direct, or shall be recoverable by distress or action as hereinafter provided with respect to costs payable under this act; and the said steward shall receive for the

said schedule, and the expense of application as to ages and rates, such sum as the said commissioners shall think fit and proper to allow for the same, with the other costs of apportionment; and in like manner such steward or lord shall from time to time make out and send to the said commissioners, upon request, all statements, schedules and information which they shall from time to time require, from the court rolls, quit rentals, and other documents of the like nature; and in case default shall be made by the steward or lord in complying with any such request, he shall forfeit such sum and sums, not exceeding the sum of five pounds, as the said commissioners shall from time to time in their discretion order and direct, and which sums shall be deducted from any compensation to be awarded or sum to be allowed to him under this act."

Sect. 28. " And be it enacted, that when the said valuers shall be so instructed by the said commissioners, pursuant to such agreement, they shall accordingly proceed in the discharge of the duty intrusted to them; and in every case in which the agreement shall have provided that the rent-charge, or (where the commutation shall be for the payment of a fine on death or alienation) that the commutation fine shall be subject to increase or diminution by the valuers, or that the amount of the rent-charge shall be fixed by them, the said valuers shall proceed to determine, within the limit prescribed by the agreement, the amount of increase or diminution, or shall ascertain the amount to be paid by way of rent-charge (as the case may require); and the said valuers shall afterwards, or where the rent-charge shall be specifically stated in the agreement, and shall not have been apportioned thereby, shall at once proceed to apportion the total sum to be paid by way of rent-charge; and in regulating the amount of rent-charge, and also in making such apportionment, the said valuers shall take into account the facilities for improvement, and all other circumstances relating to the land which shall be included in such commutation, and shall make due allowance for the same; and shall also take into consideration the relative situations of the lord when tenant for life or having other limited interest, and the respective rights of such lord and of those entitled in remainder or reversion to the manor, and what portion of such rent-charge should be paid to such lord, being tenant for life, or having other limited interest, and how the residue thereof should be applied, and whether the whole such rent-charge, or whether only a part thereof, should be paid to the lord, being tenant for life or having other limited interest in the manor; and when the tenant shall have only a life estate or other limited interest in his land, it shall be lawful for the said valuers to state what proportion (if any) of the rent-charge to be paid in respect of such land should be deferred until the next act or event in which a fine would become due to the lord; and the said valuers shall also state generally whether, and in what cases, in their opinion, the payment of the rent-charge, or of part thereof, should be deferred, and shall state such other particulars as may enable the said commissioners to defer payment of the whole rent-charge, or of any part thereof, if they shall think fit; and the said valuers shall state the amount of the fine (not exceeding five shillings) to be thereafter payable upon

death or alienation in respect of each tenement; and they shall, if so instructed by the commissioners, make an apportionment of the costs of the proceedings under this act, subject likewise to the approbation of the said commissioners; and it shall also be lawful for the said valuers to make such other allowance as they shall deem just for the particular circumstances of the several tenements, so that such allowances shall not be inconsistent with the said agreement for commutation, and the instructions received from the said commissioners."

Sect. 29. "And be it enacted, that as soon as the valuations, apportionments or schedules to be so made by the said valuers as aforesaid, shall have been sent to the said commissioners, they shall cause a copy of the same to be deposited in the hands of the steward for the time being of the manor, or if there shall be no steward, with the lord of the said manor, or with such person as they shall see fit, for the inspection of all persons interested therein within the manor, or within a parish wherein part of the manor is situated, and shall forthwith cause notice to be given, through such steward or lord, or in such manner as to the said commissioners shall seem fit, of such copy being so deposited for inspection, and which inspection shall at all reasonable times, up to the meeting after mentioned, be allowed by such steward or lord without fee (and for every neglect to allow which such steward or lord shall forfeit such sum not exceeding twenty shillings as the said commissioners shall order and direct, and which shall be deducted from the sums payable to such steward or lord under this act); and in such notice, such place and time, or places and times, shall be fixed as the said commissioners shall think fit, (the first not earlier than twenty-one days from the first giving such notice,) for holding a meeting for hearing and determining objections to the said valuation, or the amount of costs claimed by the said valuers, or to the said steward's schedule, by any parties interested; and the said commissioners, or some assistant commissioner, (to whom respectively such steward or lord shall on the day before or previous to the commencement of such first meeting, as required, deliver such copy of the said valuations, apportionments or schedules, with all notices received, as hereinafter provided,) shall at such meeting or meetings hear and determine any objections which may be then and there made against the said valuations, apportionments or schedules respectively, or any part thereof, or adjourn the further hearing thereof, if they or he shall think proper, to a future time, and may, if they or he shall see occasion, direct any further valuations, apportionments or schedules, inquiries or statements, to be made, and from time to time fix further meetings for the hearing and determining objections, of which further meetings, when not holden by adjournment, notice shall be given in manner hereinbefore directed with regard to the original meeting; provided that, unless upon cause shown to the satisfaction of the said commissioners, no person shall be entitled to make any objection to any such valuations, apportionments or schedules, who, being the lord of the said manor, shall not have left notice in writing of such intended objection at the office of the said commissioners ten days before the time fixed for any such meeting, exclusive of the day of leaving

such notice, but inclusive of the day of meeting, or who, being any person other than the lord of the said manor, shall not have left notice in writing of such intended objection with or for the steward or lord of the said manor with whom such copies shall be deposited, at the place of deposit thereof, ten days before the time fixed for any such meeting, exclusive of the day of leaving such notice, but inclusive of the day of meeting, forms of which notices shall be forwarded by the said commissioners to the said steward or lord, or other person, and shall be by him delivered to any interested party requiring the same; and which last-mentioned notices the said steward or lord, or other person shall, immediately on receipt thereof, annex to such copies or one of them, and shall note such objection on the copy to which the same relates, and allow the inspection of the said notices, in like manner and under the like penalty as aforesaid; and any default in any of the several matters and things hereinbefore required shall also subject such steward or lord or other person to the like penalty; and when the said commissioners or assistant commissioner shall have heard and determined all such objections, they and he are and is hereby required to cause such valuations, apportionment or schedules to be amended as occasion shall require, and also from time to time, whether at such meeting or not, to amend the steward's schedule, so as to show all deaths and alterations in ages of the tenants or otherwise taking place after making out the same, and before the apportionment hereinafter provided for, on being satisfied by the affidavit or declaration, as the case may be, of the steward, sworn or taken before a Master Extraordinary in Chancery, or by such other proof as they or he may deem sufficient, that such amendments and alterations are required."

Sect. 30. "And be it enacted, that the expenses of the proceedings for effecting any commutation under this act shall (except in cases where from special causes the said commisssioners shall direct otherwise, and then as they shall direct, and except in cases where the parties to the said agreement shall therein otherwise provide, and then as they shall have provided,) be payable in manner following, (that is to say,) where the valuers shall be appointed by the tenants, the costs of the valuations, apportionments and schedules shall be paid by the tenants included in the commutation, in rateable proportion to the sum charged on their land respectively under and by virtue of this act; but where the valuers shall be appointed by the lord and tenants as aforesaid, then, if not more than two shall be appointed, the lord shall pay half the costs, and the tenants as aforesaid shall pay half; and where more than two valuers shall be appointed, the lord shall pay one-third, and the tenants as aforesaid shall pay two-thirds; and in all cases of dispute or difference as to the amount of the costs, or the persons on whom any costs should fall, the said commissioners shall have power to decide the same."

Sect. 31. "And be it enacted, that forthwith after the receipt of the valuations, apportionments or schedules so settled, the said commissioners shall cause a schedule of apportionment to be made, wherein shall be stated the name or description, and the true or estimated quantity in sta-

tate measure, of the several lands to be comprised in the apportionment, and shall set forth the names and descriptions of the several proprietors and occupiers thereof; and the schedule of apportionment shall also state the amount of rent-charge charged upon the said several lands, or, where the commutation shall be for a fine payable on death or alienation, the amount of commutation fine to become payable in respect thereof upon death or alienation, and the periods at which the several rent-charges shall become due and payable; and in cases of commutation for a rent-charge, such schedule shall also state the amount of fine (not exceeding five shillings) to be thenceforth payable upon death or alienation in respect of each tenement; and such schedule shall further state to whom and in what right the same shall be respectively payable; and the said schedule shall contain all such other awards, orders and declarations as shall be required for carrying the provisions of this act into execution."

Sect. 32. "And be it enacted, that the said commissioners shall forthwith after making such schedule cause a copy thereof to be deposited with the steward, lord or other person as aforesaid, for inspection, within the manor, or within some parish where part of the manor is situate, by any parties interested, and give notice of such power to inspect, and which inspection during such period as the said commissioners shall direct shall be allowed as aforesaid, under the penalty aforesaid, recoverable as aforesaid; and at the expiration of that period, the said steward, lord or other person as aforesaid shall return the same copy or copies to the said commissioners, together with any notice he may have received during that period, pointing out any errors therein, and a statement of any errors which he may have discovered therein; and the said commissioners shall forthwith inquire into and rectify any such errors therein, and shall cause the said schedule of apportionment to be engrossed on parchment or paper, and annex thereto any agreements, schedules, maps, plans or other documents or writings required for elucidation thereof, and shall confirm such apportionment under their hands and seals, and shall add thereto the date of such confirmation."

Sect. 33. "And be it enacted, that two copies of every confirmed instrument or schedule of apportionment and confirmed agreement, and schedules to be annexed thereto or written in the same book therewith, shall be made, and sealed with the seal of the said commissioners, and one such copy shall be delivered to the steward of the manor, to be deposited and kept with the court rolls thereof, and the other copy shall be deposited with the clerk of the peace for the county or jurisdiction within which the said manor or the greater part thereof in value, computed as aforesaid, shall be situated, to be by him and his successors in office kept with the papers and books of the clerk of the peace for the time being; and all persons interested therein may have access to the said copies respectively, and shall be furnished with copies of or extracts from any such copy, on giving reasonable notice to the party having the custody of the same, and on payment of two shillings and sixpence for each inspection, and after the rate of two-pence for every seventy-two words contained in such copy or extract; and every recital or

statement in, or agreement, schedule, map, plan, document or writing annexed to such confirmed apportionment, shall be deemed satisfactory evidence of the matters therein recited or stated, or of the accuracy of such map or plan; and such deposit shall be notified by an advertisement or otherwise as the said commissioners may from time to time direct."

Sect. 34. "And be it enacted, that the said commissioners, if they shall see fit, before confirming any agreement, valuation, assessment, schedule or apportionment, may require notice thereof to be given in such manner as they shall direct to the person next in remainder, reversion or expectancy, of an estate of inheritance in any manor or lands, or any other person to whom they may think notice ought to be given, and may by themselves or by some assistant commissioner hear and determine any objection made to such confirmation by any person so interested therein."

Sect. 35. "And be it enacted, that it shall be lawful for the said commissioners to correct or supply any manifest error or omission in any agreement, valuation, assessment, schedule or apportionment, at any time after the same shall respectively have been made or confirmed, with the consent in writing of all the parties affected by such error or omission, but not otherwise."

Sect. 36. "And be it enacted, that from the 1st day of January next following the confirmation of every such apportionment, the lands of the said manor shall be absolutely discharged from the payment of all the lord's rents, fines and heriots, (save and except, in the case of a commutation for a rent-charge, a fixed fine not exceeding the sum of five shillings, to be stated in every such apportionment as aforesaid, and which shall be payable to the lord in every case of death or alienation,) and from the lord's right of timber, and any other right of the lord which may be the subject of commutation, and instead thereof there shall be payable thenceforth, or from such time as shall be fixed by the said commissioners, to the person in that behalf mentioned in the said apportionment, the yearly sum of money mentioned therein, where the same shall not exceed twenty shillings, and in other cases a yearly sum of money which shall be deemed to be of the value of such number of imperial bushels and decimal parts of an imperial bushel of wheat, barley and oats respectively as such sum would have purchased if equal third parts thereof had been invested in the purchase of those respective descriptions of grain at the prices ascertained by the advertisement provided for by the said Act for the Commutation of Tithes in England and Wales next preceding the passing of this act, that is to say, at the price (for wheat) of six shillings and eleven-pence three farthings per bushel, for barley of four shillings and one penny per bushel, and for oats of two shillings and ten-pence three farthings per bushel, such respective yearly sum to be payable instead of the said rents, fines and heriots, and other rights as aforesaid, in the nature of a rent-charge issuing out of the lands charged therewith; and such yearly sum shall be payable by two half-yearly payments on the 1st day of July and the 1st day of January in every year, the first payment (except where deferred by the said order of the said commissioners) being made on the 1st day of July next after

the lands shall have been discharged from rents, fines and heriots, and other rights as aforesaid; and such rent-charge may be recovered, at the suit of the person entitled thereto, by distress and entry, as hereinafter mentioned; and after every 1st day of January, the yearly sum of money thenceforth payable in respect of such rent-charge, where it shall exceed the sum of twenty shillings, shall vary so as always to consist of the price of the same number of bushels and decimal parts of a bushel of wheat, barley and oats respectively, according to the prices ascertained by the then next preceding advertisement; and any person entitled from time to time to any such varied rent-charge, shall have the same powers for enforcing payment thereof as are hereinafter contained concerning the original rent-charge; and that whenever the commutation shall be in consideration only of a fine to be payable upon death or alienation, the amount of the fine to be mentioned in the apportionment (if the same shall not exceed twenty shillings), and in other cases the value of the respective quantities of wheat, barley and oats, which equal third parts of such fine would have purchased at the respective prices per bushel hereinbefore set forth, such value to be ascertained by the prices stated in any such advertisement so provided for as aforesaid, next preceding the event or act upon which the fine shall have become payable, shall be paid to the person in that behalf mentioned or described in the apportionment, and shall be recoverable by him in like manner as any fine upon death or alienation is now by law recoverable."

Sect. 37. "Provided always and be it enacted, that in every case in which by the agreement entered into as aforesaid any rent-charge or rent-charges shall have been left subject, in certain events, to increase or diminution, the schedule of apportionment shall set forth the events on the happening of which such increase or diminution is to take place, and the amount or rate of increase or diminution respectively."

Sect. 38. "And be it enacted, that if, upon the expiration of six calendar months after the confirmation of any agreement to be made as hereinbefore mentioned, no valuers shall have been appointed, or their valuation, apportionments or schedules (as the case may be), respectively shall not have been made, and sent to the office of the said commissioners, or if any valuer appointed under or by virtue of this act shall die or become incapable of acting, it shall be lawful for the said commissioners, from time to time to appoint such competent person or persons as they shall deem fit as valuer or valuers, with the like powers and duties, and whose costs and expenses shall be payable in like manner as is hereinbefore provided with respect to valuers to be appointed and acting under any such agreement for commutation as aforesaid."

Sect. 39. "And be it enacted, that if any action or suit shall be depending touching the right to or amount of any fines or other manorial payments or incidents (except mines and minerals), or any question shall arise thereon, it shall be lawful for the said commissioners or assistant commissioner to appoint a time and place in or near the manor for hearing and determining the same, and to inquire into, hear and determine such right or amount, or such question or questions as aforesaid; and the decision of the

said commissioners or assistant commissioner at such meeting, or any adjourned or renewed meeting, shall, subject to the provisions hereinafter contained, be binding and conclusive on all persons to whom twenty days notice of the time, place and intent of such meeting shall have been given, or left at their usual place of abode, or left with the occupying tenant of the lands to which such meeting shall relate, his, her and their heirs, executors, administrators and assigns, and the successors of any body politic or corporate; and such occupying tenant shall forthwith send such notice by post or otherwise to the party for whom the same was left, and in default of so doing shall be liable to the penalty of not less than five pounds and not more than twenty pounds, to be recovered before two of her majesty's justices of the peace on summary application in manner hereinafter mentioned, and shall also be liable to pay and make good to such party all damage which he may sustain by such default, to be recovered, with full costs of suit, in an action in any of her majesty's courts of law at Westminster: Provided always, that if any such decision shall directly or indirectly affect any right to mines or minerals, such decision, so far as it relates to any such right, shall be null and void, and of no effect whatever, either at law or in equity."

Sect. 40. "Provided always and be it enacted, that any person claiming to be interested in any lands, who shall be dissatisfied with any such decision of the said commissioners or assistant commissioner, may, if the yearly value of the payment to be made or withholden according to such decision shall exceed the sum of twenty pounds, cause an action to be brought in any of her majesty's courts of law at Westminster against the person in whose favour such decision shall have been made, within three calendar months next after such decision shall have been notified in writing, in such manner as the said commissioners or assistant commissioner shall direct, to the parties interested therein, or to their known agents, in which action the plaintiff shall deliver a feigned issue, whereby such disputed right may be tried, and shall proceed to a trial at law of such issue at the sittings after the term, or at the assizes then next or next but one after such action shall have been commenced, to be holden for the county within which the lands or the greater part thereof are situated, with liberty nevertheless for the court in which the same shall have been commenced, or any judge of her majesty's courts of law at Westminster, to extend the time for going to trial therein, or to direct the trial to be in another county, if it shall seem fit to such court or judge so to do; and every defendant in any such action shall enter an appearance thereto, and accept such issue; but in case the parties shall differ as to the form of such issue, or in case the defendant shall fail to enter such an appearance or accept such issue, then the same shall be settled under the direction of the court in which the action shall be brought, or by any judge of her majesty's courts of law at Westminster, and the plaintiff may proceed thereon in like manner as if the defendant had appeared and accepted such issue; and the parties in such action shall produce to each other, their respective attornies or counsel, at such time and place as any judge may order, before trial, and also to the

court and jury upon the trial of any such issue, all books, deeds, papers and writings, terriers, maps, plans and surveys relating to the matters in issue, in their respective custody or power; and it shall be lawful for the judge by whom any such action shall be tried, if he shall think fit, to direct the jury to find a verdict, subject to the opinion of the court upon a special case; and the verdict which shall be given in any such action, or the judgment of the court upon the case subject to which the same may be given, shall be final and binding upon all parties thereto, unless the court wherein such action shall be brought shall set aside such verdict, and order a new trial to be had therein, which it shall be lawful for the said court to do if it shall see fit: Provided also, that in case any such decision shall involve a question of law only, and the parties in difference shall be agreed upon the facts relating thereto, and whereon such decision shall have been founded, the said commissioners or assistant commissioner, at the request of the person dissatisfied, (such request to be made in writing within three calendar months after such decision, and at least fourteen days previous notice in writing of such request to be given in like manner to the other parties in difference, or to their known agents,) shall direct a case to be stated for the opinion of such one of her majesty's courts of law at Westminster as the said commissioners or assistant commissioner shall think fit, which case shall be settled by them or him, or under their or his direction, in case the parties differ about the same, and may be set down for argument, and be brought before the court in like manner as other cases are brought before the court; and the decision of such court upon every case so brought before it shall be binding upon all parties concerned therein: Provided always, that after such verdict given, and not set aside by the court, or after such decision of the court, the said commissioners or assistant commissioner shall be bound by such verdict or decision; and the costs of every action, or of stating such case, and obtaining a decision thereon, shall be in the discretion of the court in or by which the same shall be decided, which may order the same to be taxed by the proper officer of the court, and the like execution may be had for the same as if such costs had been recovered upon a judgment of record of the said court."

Sect. 41. "And be it enacted, that no proceedings of or before the said commissioners or assistant commissioner, or in any action, or in any case stated, or reference, in pursuance of this act, shall abate or cease by reason of the death of any person interested therein."

Sect. 42. "And be it enacted, that if any person in whose favour any such decision of the said commissioners or any assistant commissioner shall have been made shall die before any such action shall have been brought or case stated, and before the expiration of the time hereinbefore limited for that purpose, it shall be lawful for any person who might have brought such action, or have had such case stated, against the person so dying, to bring or have the same within the time so limited as aforesaid nominally against such person as if living, and to serve the said commissioners or assistant commissioner with process and notices relating thereto in the same manner as the person deceased might have been served therewith if

living; and it shall be lawful for every person entitled to the benefit of such decision as aforesaid, or in case of any such person being a minor, idiot, lunatic, feme covert, beyond the seas, or labouring under any other legal disability, the guardian, trustee, committee of the estate, husband or attorney respectively, or in default thereof such person as may be nominated for that purpose by the said commissioners, and whom they are hereby empowered to nominate under their hands and seal, to appear and defend such action or argue such case; and proceedings shall be had therein in the like manner, and the rights of all persons shall be equally bound and concluded by the event of such action or the decision of such case, as if such person had been living or free from disability; and the costs of every such action or case shall be in the discretion of the court as aforesaid."

Sect. 43. "And be it enacted, that the said commissioners or any assistant commissioner may, by summons under their or his hands or hand, require the attendance of all such persons as they or he may think fit to examine upon any matter brought before them or him, or respecting which they or he have or hath power to act as hereinbefore mentioned relating to any such commutation as aforesaid, or to any enfranchisement in pursuance of the provisions hereinafter contained, and also make any inquiry and call for any answer or return as to such matter, and also administer oaths, and examine all such persons upon oath, and cause to be produced before them or him, upon oath, all deeds, documents and writings, books, court rolls, rentals, contracts, agreements, accounts, writings, papers, maps, plans and surveys, or copies thereof respectively, in anywise relating to any such matter: Provided always, that no such persons shall be required, in obedience to any such summons, to travel more than ten miles from the place of his abode to give evidence, or produce any deeds, papers or writings relating to the title of any lands, unless such production shall appear to the said commissioners or assistant commissioner essentially requisite in making the inquiries to be made under this act."

Sect. 44. "And be it enacted, that the said commissioners or assistant commissioner, in any case where they or he may see fit, may order such expenses of witnesses, and of the production of any books, deeds, court rolls, contracts, accounts or writings, maps, plans and surveys, or copies thereof, and all other expenses (except the salaries or allowance to any of the said commissioners or assistant commissioner provided for as aforesaid) incurred in the settlement of any suit or difference, or in the hearing or determining any objection, valuation, schedule or apportionment before the said commissioners or assistant commissioner, to be paid by such parties interested in the production thereof respectively, or in the event of such suit, difference or objection, and to such person or persons and in such proportions as the said commissioners or assistant commissioner may think fit and reasonable."

Sect. 45. "And be it enacted, that every tenant or occupier who shall pay any such rent-charge as aforesaid, or any expenses legally chargeable under this act upon the land of which he shall be such tenant or occupier,

shall be entitled to deduct the amount from the rent payable by him to his landlord, and shall be allowed the same in account with his said landlord."

Sect. 46. "Provided always and be it enacted, that in every case in which any tenant or occupier shall show to the commissioners that he holds copyhold lands for a term of years of a tenant of any manor at a lower rent than the sum about to be imposed on the same for commutation or enfranchisement, or for the expenses incurred under the provisions of this act, it shall be lawful for the said commissioners to declare all agreements entered into under the authority of this act null and void so far as regards such lands, and such lands shall be exempted from the provisions of this act, unless the tenant on the court roll shall give such security for the payment of all sums so to be charged on such lands as shall be satisfactory to the said tenant or occupier, and to the commissioners."

Sect. 47. "And be it enacted, that in case the said rent-charge shall at any time be in arrear and unpaid for the space of twenty-one days next after any half-yearly day of payment, it shall be lawful for the person entitled to the same, after having given or left ten days notice in writing at the usual or last known residence of the tenant in possession, to distrain upon the lands liable to the payment thereof or any part thereof for all arrears of the said rent-charge, and to dispose of the distress when taken, and otherwise to act and demean himself in relation thereto as any landlord may for arrears of rent reserved on a common lease for years, provided that not more than two years' arrears shall at any time be recoverable by distress."

Sect. 48. "And be it enacted, that in case the said rent-charge shall be in arrear and unpaid for the space of forty days next after any half-yearly day of payment, and there shall be no sufficient distress on the premises liable to the payment thereof, it shall be lawful for any judge of her majesty's courts of record at Westminster, upon affidavit of the facts, to order a writ to be issued directed to the sheriff of the county in which the lands chargeable with the rent-charge are situated, requiring the said sheriff to summon a jury to assess the arrears of rent-charge remaining unpaid, and to return the inquisition thereupon taken to some one of her majesty's courts of law at Westminster, on a day therein to be named, either in term time or vacation; a copy of which writ, and notice of the time and place of executing the same, shall be given to the owner of the land, or left at his last known place of abode, or with his known agent, ten days previous to the execution thereof; and the sheriff is hereby required to execute such writ according to the exigency thereof; and the costs of such inquisition shall be taxed by the proper officer of the court; and thereupon the owner of the rent-charge may sue out a writ of habere facias possessionem, directed to the sheriff, commanding him to cause the owner of the rent-charge to have possession of the lands chargeable therewith until the arrears of rent-charge found to be due, and the said costs, and also the costs of such writ, and of executing the same, and of cultivating and keeping possession of the lands, shall be fully satisfied: Provided always, that not more than

two years' arrears, over and above the time of such possession, shall be at any time recoverable."

Sect. 49. " And be it enacted, that it shall be lawful for the court out of which such writ shall have issued, or any judge at chambers, to order the owner of the rent-charge who shall be in possession by virtue of such writ, from time to time to render an account of the rents and produce of the lands, and of the receipts and payments in respect of the same, and to pay over the surplus (if any) to the person for the time being entitled thereunto, after satisfaction of such arrears of rent-charge and all costs and expenses as aforesaid, and thereupon a writ of supersedeas to issue to the said writ of habere facias possessionem, and also by rule or order of such court or judge from time to time to give such summary relief to the parties as to the court or judge shall seem fit."

Sect. 50. " And be it enacted, that the several provisions of an act passed in the fifth year of the reign of his late majesty King William the Fourth, intituled ' An Act to amend an Act of the Eleventh Year of King George the Second, respecting the Apportionment of Rents, Annuities, and other Periodical Payments,' shall extend to all rent-charges payable under this act."

Sect. 51. " And be it enacted, that nothing in this act contained shall affect any right to any rents, fines or heriots, or any other manorial right proposed as the subject of commutation, which shall have become due or have accrued on or before the 1st day of January next following the confirmation of the apportionment."

Sect. 52. " And be it enacted, that it shall be lawful for the lord of any manor, and any one or more tenant or tenants of such manor, (whatever may be their respective interests,) to enter into an agreement, with the consent of the commissioners, for the commutation of the lord's rights to rents, fines and heriots, or of any such rights respectively, and any other of the lord's rights affecting the land which shall be included in such agreement; and such agreement may include an apportionment of the rent-charge or other consideration for the commutation, and of the costs and expenses of and attending the same, and may fix a scale of fees to be payable to the steward from and after the confirmation of the agreement, but so nevertheless as not to affect the interests of any steward in office at the time of the passing of this act who shall hold his office for life or during good behaviour, or of any steward of a manor so in office as aforesaid where the usage shall have been such as in the opinion of the said commissioners to lead to a just expectation that the steward will hold his office during his life or good behaviour; and every such commutation may be made in consideration of a rent-charge to commence and (where it shall exceed the sum of twenty shillings) to be variable as aforesaid, and of a fine certain (not exceeding in any case the sum of five shillings) upon death or alienation, or may be made in consideration of the payment of a fine on death or alienation (*g*); and every such rent-charge, or, where the commutation shall be a fine on death or alienation, every such fine may be made

(*g*) Vide n. (*a*) to sect. 56, *infra*.

subject to a certain increase or diminution, to be stated in the agreement, or to be afterwards fixed by valuers, (as the case may be,) in any event which may be provided for by the agreement; and whenever so many as twelve persons (*h*), being tenants or all the tenants of any manor, shall at the same time agree with the lord for any such commutation, and the agreement shall not include apportionment, it shall be lawful to effect such commutation by a schedule to be prepared by the steward, and delivered by him to the said commissioners, and to be confirmed and sealed by such commissioners under this act; and all the provisions hereinbefore contained for carrying into effect a commutation apportionment made by valuers, and for the deposit of copies thereof, shall be applicable to the case of a commutation agreed upon between the lord and such number of his tenants as aforesaid, save that the said commissioners shall not make any alterations or amendments in such schedule, or the terms of such commutation, without the consent of the parties interested therein: Provided always, that whenever the estate of any party to such commutation shall be less than an estate of fee simple in possession, or corresponding copyhold or customary estate, notice in writing shall be given by or on behalf of such party to the person entitled to the next estate of inheritance in remainder or reversion in the manor or land to be affected by such commutation, so that the assent or dissent or acquiescence of such person entitled in remainder or reversion may be stated in writing to the said commissioners when such a schedule of apportionment as aforesaid shall be sent to them, but the said commissioners shall notwithstanding cause such further notices to be given and such other inquiries to be made as they shall deem fit before confirming such apportionment; and in all cases, if the parties shall think fit, a commutation may be effected, with the consent of the said commissioners, by such conveyance, deed or assurance as would or might be adopted for carrying into effect such commutation if the lord were seized of the manor for an absolute estate of inheritance in fee simple in possession, or by any agreement to be enrolled or entered on the court rolls of the manor, a copy thereof delivered to the tenant, as in cases of admission to lands copyhold of the manor."

Sect. 53. "And be it enacted, that the lord of any manor shall, in addition to other his remedies for enforcing admittances, and for recovery of the fine thereon now possessed in respect of fines arbitrary, be entitled to adopt and take in all cases of commutation fines, and the admittance of any person whomsoever to lands held subject thereto, the like proceedings as are authorized in the admittance of infants, femmes coverts and lunatics, and recovery of fines in such admittances, in and by an act passed in the session of the eleventh year of the reign of his late majesty King George the Fourth and the first year of the reign of his late majesty King William the Fourth, intituled 'An Act for the consolidating and amending the Law relating to Property belonging to Infants, Femmes Coverts, Idiots, Lunatics and Persons of unsound Mind (*i*).'"

Sect. 54. And be it enacted, that from and after any commutation to be effected under this act which shall not comprise all the manorial rights

(*h*) Vide n. (*b*) to sect. 56, *infra*.

(*i*) Vide pt. 1, pp. 285, 314, 356.

under which the lands the subject thereof shall be held, it shall and may be lawful for the lord and tenants for the time being, and in like manner as aforesaid, from time to time to commute any rights not previously commuted, and either in consideration of a rent-charge and fines limited as aforesaid, or of fines payable on death or alienation, and whether the original commutation was in the one mode or the other; also to provide that such additional payments shall, if of the same class, be added to and increase the payments under the original commutation, or be made separately payable; also that it shall be lawful in like manner, and at any time after any such commutation or supplemental commutation, to substitute a commutation at a rent-charge and fines limited in amount as aforesaid for a commutation under this act at fines payable on death or alienation."

Sect. 55. "And be it enacted, that after any commutation apportionment shall have been effected under this act, any apportionment of the commutation rents or fines, whether on the subdivision of the lands subject thereto, or whenever otherwise required, shall and may be effected by an entry of apportionment on the court rolls in like manner and with the like consent as is now used and adopted in apportionment of quit rents; and which entry the steward for the time being is hereby directed to make, whenever required and authorized so to do, by a warrant or authority in writing under the hands of the lord and tenant for the time being, stating the terms of apportionment, and requiring the entry of apportionment on the court rolls."

Sect. 56. "And be it enacted, that for the purpose of enabling lords and tenants of manors to effect either general or partial enfranchisements, it shall be lawful for the lord of any manor, whatever may be his estate or interest therein, with the consent of the said commissioners under this act, at any time or times after the passing this act, to enfranchise all or any of the lands holden of his manor, in consideration of such sum or sums of money, whether payable forthwith or at a future time, as shall be agreed to be paid by the tenant or tenants whose lands are to be enfranchised (*k*); and it shall be lawful for any tenant, whatever may be his estate or interest, with the like consent of the said commissioners under this act, to accept such enfranchisement on the terms so agreed on; and whenever so many as twelve persons (*l*), being tenants or all the tenants of any manor, shall at the same time

(*k*) By 6 & 7 Vict. c. 23, s. 1, any enfranchisement may be made, either wholly or in part, for the consideration of a grant of an annual rent in fee out of the lands enfranchised, and any commutation or enfranchisement may be made, either wholly or in part, for the consideration of a conveyance of lands parcel of the same manor, and subject to the same uses and trusts, as the lands enfranchised, or any right to mines or minerals in or under such lands, or any right to waste in lands

belonging to such manor: and by 7 & 8 Vict. c. 55, s. 5, any commutation or enfranchisement may be made, wholly or in part, for the consideration of a conveyance of lands, or of any right to mines or minerals, though not parcel of or situate under the lands of the same manor as the lands to be commuted or enfranchised. Vide the acts, post.

(*l*) By the 11th sect. of 6 & 7 Vict. c. 23, a commutation or enfranchisement may be effected by a schedule of appoint-

agree with the lord for the enfranchisement of their lands, then it shall be lawful to effect such enfranchisement by a schedule of apportionment which shall have been specifically agreed upon between the lord and tenants, and where none such shall have been agreed upon, then by a schedule of apportionment to be prepared by the steward, and delivered by him to the said commissioners, such schedule to be in either case afterwards confirmed and sealed by such commissioners; and such schedule shall state the sums to be paid for enfranchisement by the several tenants, or charged on their respective lands, and the periods of the payment of the principal money respectively, or the commencement of interest, either pursuant to some apportionment to be made by valuers to be appointed by the lord and tenants, parties to the agreement, or as shall seem just to the said commissioners, having regard to all the circumstances of the case; and where any compensation shall have been agreed to be paid to the steward or other officers of the manor for the loss he or they may sustain by such enfranchisement, which compensation shall in all cases be provided for where a steward shall hold his office by patent or other instrument for the term of his life or during good behaviour, or where in the absence of such patent or other instrument, the usage shall have been such as in the opinion of the said commissioners to lead to a just expectation that the steward will hold his office during life or good behaviour, the schedule shall contain an apportionment of the sum agreed to be paid; and every such schedule shall contain all such other matters as shall be requisite for carrying into effect the provisions of this act; and all the provisions hereinbefore contained for carrying into execution a commutation apportionment made by valuers shall, so far as the same are capable of application, be deemed and taken to be applicable to the case of an enfranchisement under the provisions herein contained, save that the said commissioners shall not make any alterations or amendments in such schedule without the consent of the parties interested therein: Provided always, that whenever the estate of any party to such enfranchisement shall be less than an estate of fee simple in possession, or corresponding copyhold or customary estate, notice in writing shall be given by or on behalf of such party to the person entitled to the next estate of inheritance in remainder or reversion in the manor or land to be affected by such enfranchisement (*m*), so that the assent or dissent or acquiescence of such person entitled in remainder or reversion may be stated in writing to the said commissioners, when such a schedule of apportionment as aforesaid, or when such conveyance, deed or assurance as hereinafter mentioned, shall be sent to them, but the said commissioners shall notwithstanding cause such further notices to be given and

ment, whenever six persons, being tenants of any manor, shall agree with the lord for the commutation or enfranchisement of their lands.

(*m*) The 6 & 7 Vict. c. 23, s. 13, provides, that in case any tenant, whose estate shall be less than a fee simple, shall

be a party to an enfranchisement, and pay the whole price thereof, it shall not be necessary that the person entitled to the next estate of inheritance, or remainder or reversion, shall have notice of such enfranchisement.

such other inquiries to be made as they shall deem fit before confirming such apportionment, or consenting to such conveyance, deed or assurance: Provided also, that in case the person so next entitled in remainder or reversion as aforesaid shall be a minor, idiot, lunatic, feme covert, or under any other legal disability, or shall be beyond the seas, such notice as aforesaid shall be given to the guardian, trustees, committee of the estate, husband or attorney of such person respectively, or in default thereof, or in case the person so entitled shall be unknown or not ascertained, then such notice shall be given to some person, to be nominated for that purpose by some writing under the hands and seal of the said commissioners, after due inquiry shall have been made by them as to the fitness of such person to judge of the propriety of assenting to or dissenting from any such agreement; and that in every case in which dissent in writing shall have been expressed, the commissioners shall withhold their confirmation of the apportionment, or their consent to the conveyance, deed or assurance hereinafter mentioned, until upon further inquiry they shall be satisfied that the agreement is not fairly open to objection."

Sect. 57. " And be it enacted, that if such agreement for enfranchisement shall not be entered into by all the tenants of the manor, or their number shall be less than twelve, or whatever may be their number, if the parties shall think fit, an enfranchisement may be effected, with the consent of the said commissioners, by such conveyance, deed or assurance as would or might be adopted for effecting such enfranchisement if the lord were seized of the manor for an absolute estate of inheritance in fee simple in possession."

Sect. 58. " And be it enacted, that in every case in which any such agreement for enfranchisement shall be so entered into, and shall be proposed to be carried into effect by a schedule of apportionment, the said commissioners, before they shall signify their consent thereto, shall, upon the written request of any three or more tenants, parties to the agreement, but not otherwise, satisfy themselves, in such way and by such evidence as they shall see fit, of the title of the lord to the manor; and the expense of investigating the title to the manor, and the other expenses attending every such agreement, whether carried into effect by a schedule of apportionment or otherwise, and the confirmation thereof and the schedule of apportionment (if any) shall be borne by the lord and tenants, parties to such agreement, in such proportion as they may agree, or in default of agreement as the said commissioners may direct: Provided always, that the expenses payable by lords of manors having particular interests or being trustees shall, with any other expenses they may reasonably incur in or about any such agreement, (the amount of such last-mentioned expenses being subject to the approval of the said commissioners,) be paid out of the first monies to be received out of the enfranchisements to be effected under this act: Provided always, that if the lord shall refuse to afford such information as may enable the commissioners to be satisfied of his title, or if the commissioners shall for any other reason not be satisfied of such title, the said agreement so entered into shall be null and void."

Sect. 59. " And be it enacted, that in all cases in which the lord for the

time being shall be only entitled to the manor for a limited estate or interest therein, or shall be under any legal disability, the sum or sums of money to be paid for enfranchisement shall be paid and applied in manner hereinafter provided for."

Sect. 60. " And be it enacted, that whenever by any such agreement as aforesaid which shall be proposed to be carried into effect by a schedule of apportionment, it shall have been stipulated that any tenant shall be at liberty to defer the payment of a portion of the sum charged in respect of his lands or any portion thereof, and such tenant shall give notice under his hand to the steward or lord, as hereinbefore directed with respect to notices in cases of commutation, of his desire to defer payment accordingly, at any reasonable time after the execution of any such agreement for enfranchisement, and before the delivery of the schedule to the commissioners, it shall be lawful for the said commissioners in their schedule of apportionment in every such case, and also (with the consent of the lord) in the case of any such tenant giving notice as aforesaid, although no stipulation shall have been made by the agreement, to award that so much of the sum apportioned to any such tenant as shall have been charged for enfranchisement from fines or other manorial rights, to which such tenant, if he possessed a life or other limited interest, would not have been liable thereafter during his tenancy, shall not be paid until the period of the next act or event on which a fine or other such manorial right would have become payable or due to the lord if the said lands had remained unenfranchised, and that within six months after such act or event the said sum shall become payable, with such addition thereto as the said commissioners shall direct."

Sect. 61. " And be it also enacted, that as soon as the said sum, with such addition thereto, shall become payable, the lord or other person for the time being entitled to the benefit thereof shall become entitled to the rents and profits of the land in respect of which the same shall be due, unless and until he shall have received notice that such sum is become payable, so that he may proceed to recover the same; and it shall be lawful for such lord or other person to proceed to obtain possession of the said rents and profits, in like manner as if the said land had been lawfully seized into the hands of the lord for some default of the tenant; provided that notice in writing stating the nature of such act or event as aforesaid, delivered by or on behalf of the tenant to the lord or other person entitled, or the clerk of the peace or other persons having the custody of the schedule of apportionment, shall be deemed sufficient notice that the said sum is payable; and as soon as the said sum is become payable, the land in respect of which the same shall be due, and the beneficial owner thereof for the time being, shall be subject to the like remedies for the recovery thereof, and such sum shall become applicable in like manner, subject to any such allowance thereout as hereinafter provided, as if such land had not been previously enfranchised, and the payment for the same had not been deferred."

Sect. 62. " And be it enacted, that for the purpose of freeing other

tenants from the inconvenience to which in certain cases they might be subjected by an immediate liability to the payment of the sums to be agreed to be paid to the lord of the manor for enfranchisement under this act, it shall be lawful for such tenant, at any reasonable time after the execution of any such agreement for enfranchisement as aforesaid (to be fixed by the said commissioners, and in default of their fixing any other limit at any other time, or until within ten days next previous to the delivery by the steward to the commissioners of the schedule of such apportionment), to declare, by notice under his hand, to be delivered to the lord or steward as hereinbefore provided with respect to notices in cases of commutation, his desire that such compensation money should remain a charge on the lands affected thereby for any number of years not exceeding fourteen years, or, if a tenant for life, for the whole period of his life and one year longer, and which notice the steward shall forthwith, or with the said schedule of apportionment, send to the said commissioners, and thereupon the said commissioners, with the consent of the lord, but not otherwise, shall insert in a column of such apportionment to be appropriated to such purpose, the number of years or period for which such charge is to be continued, and thereupon (subject as after mentioned) no proceedings shall be instituted during such time or period to enforce payment of the principal money so apportioned: Provided nevertheless, that interest after the rate of four pounds per centum per annum shall be payable and paid half-yearly on the days to be mentioned in such apportionment, or, if not mentioned, then at the expiration of each half year computed from the date thereof; and nothing herein contained shall extend to protect any tenant or other person from such proceedings, in case interest for one year and a half shall remain due on the principal sum apportioned or awarded or on any part thereof to the amount of one-half: Provided also, that, during the term or period so fixed, the lord shall not be compellable to receive payment of the principal money without receiving twelve calendar months' notice of the intention to pay off the same; and in case the interest on such principal sum or any part thereof shall at any time be in arrear or unpaid for thirty days after any half-yearly payment shall be due as aforesaid, it shall be lawful for the lord or party entitled for the time being to receive such interest money to levy the same by distress and sale of the goods on the lands and tenements enfranchised and affected by such enfranchisement, or any of them, as fully and in like manner as if the same had been rent in arrear, and subject to recovery by distress."

Sect. 63. "And be it enacted, that where the lord of the manor shall be only entitled for a limited estate or interest therein, and the said commissioners shall have deferred payment of any sum or sums for enfranchisement under the powers hereinbefore contained, so that instead of such lord receiving a certain sum, or the interest thereon, forthwith, he, or the lord for the time being, shall become entitled at a future period to the said deferred sum, with an addition thereto on account of the fine which would have become payable on the act or event fixing such period, or with an addition thereto on any other account, it shall be lawful for the said com-

missioners to award and direct, that, out of the money payable or chargeable forthwith for enfranchisement of any lands in such manor, a certain sum of principal money shall be paid to or charged in favour of such lord as if he were absolutely seized as tenant in fee simple in possession of such manor, and such principal sum shall be paid or charged accordingly; and in case it shall happen that there shall be no money payable forthwith for enfranchisement, or not sufficient for making such allowance to the lord as aforesaid, or with the consent of the lord in any case, it shall be lawful for the said commissioners to award and direct that so much of the sum payable at a future period as they shall think adequate to his interest, shall become his absolute property, and shall be paid or charged accordingly."

Sect. 64. "And be it enacted, that all lands which shall be enfranchised under this act shall be deemed to be held under the same title as that under which the same were held at the time of such enfranchisement, and shall not be subject to any estates, rights, titles, interests, incumbrances, claims or demands affecting the manor of which the same were holden."

Sect. 65. "And be it enacted, that the expenses of valuation, including the expense of making copies of apportionments, schedules, and all other documents required under the provisions of this act, and all other expenses necessary in the making any commutation or enfranchisement as aforesaid, except when otherwise provided by this act, shall be paid by the tenants, or by the tenants and lords, in such proportions as the said commissioners shall in the confirmed apportionment, or otherwise, under their hands and seal, direct; and that if any difference shall arise touching the amount of the said expenses, or the share thereof to be paid by or to any person, it shall be lawful for the said commissioners or assistant commissioner to certify under their or his hands or hand the amount to be paid by or to such person; and in case any person shall refuse or neglect to pay the amount so certified or specified in such apportionment to be payable from him immediately after notice thereof, then, upon production of such certificate, or of either of the deposited copies, under seal, of the said apportionment, before two of her majesty's justices of the peace for the county, riding, division or jurisdiction wherein the manor to which the same relates, or the greater part thereof in value as appearing in such apportionment, is situate, and on proof of such refusal or neglect, such justices are hereby authorized and empowered, by warrant under their hands and seals, to cause the same, and the costs of application and distress, to be levied by distress and sale of the goods of the person liable to pay the same, and to render the surplus (if any), after deducting the costs of distress and sale, to the person distrained upon."

Sect. 66. "And be it enacted, that if such expenses shall not be levied under the said distress within two months after the said warrant shall be granted, it shall be lawful for the person entitled to the said expenses (if the same shall, with the costs of application to such justices, amount to forty shillings or upwards), and his executors or administrators, to recover the same expenses and costs, with full costs of suit, in an action of debt in any of her majesty's courts of law at Westminster against the party named

in such warrant and certificate or apportionment as aforesaid, his executors or administrators, in which action such certificate or deposited copy of apportionment shall be satisfactory evidence of the amount of such expenses so awarded by the said commissioners or assistant commissioner, and of the same being due for and to the parties therein named; and the certificate of such justices under their hands on such warrant shall in like manner be evidence of the amount of costs of such application; and the production of such warrant (which in all such cases shall be allowed, and such certificate given by such justices,) shall be satisfactory evidence of the non-recovery of such expenses and costs respectively under a distress."

Sect. 67. "And be it enacted, that every tenant, being a trustee, or not beneficially interested in the lands of which he stands admitted tenant, to be affected by any commutation or enfranchisement under this act (save as against an unadmitted mortgagee), shall be entitled to recover in like manner, by distress or action respectively, all expenses, costs and charges which he may have to pay under or by reason of any such certificate, apportionment, distress or action, from the person beneficially interested at the date of such apportionment in the said lands, his executors, administrators or assigns, or by a like distress on the said lands (n), and the occupier thereof shall be entitled to deduct any such payments out of any rent then or subsequently due; and should any dispute arise as to any trusteeship or right to such recovery, the same shall be determined by the said commissioners or assistant commissioner in like manner as is hereinbefore provided with respect to other causes of dispute or difference arising under this act, and their or his certificate shall be deemed satisfactory evidence of the facts therein stated; and the like evidence shall be produced before such justices or in such action as is hereinbefore provided in other cases of distress."

Sect. 68. "And be it enacted, that any tenant having a limited interest, and who shall pay any such expenses or costs, may, with the consent of the said commissioners under their hands, and by a simple entry on the court rolls of the manor, (and for which entry the steward shall only charge thirteen shillings and four-pence, and which shall not be subject to any stamp duty,) charge such expenses and costs, with interest thereon at the rate of four pounds per centum per annum, on the copyhold lands to which the same shall relate, but so nevertheless that the principal charge on such lands shall be lessened in every year following such charge by one-twentieth part at least of such original charge thereon, and shall be subject to previous mortgages (o)."

(n) The 7 & 8 Vict. c. 55, s. 1, extends the provisions of this and the 6 & 7 Vict. c. 23, as to the recovery of expenses paid by any tenant being a trustee, as well to cases in which there shall not be an apportionment on commutation or enfranchisement in pursuance of those acts or the first-mentioned act, as to cases in

which there shall be an apportionment: and see the 3d sect. of that act.

(o) The 7 & 8 Vict. c. 55, s. 2, extends the power of charging with expenses given by this section, every person having a limited beneficial interest only in the lands, who shall pay such expenses to any tenant being a trustee.

Sect. 69. "And be it enacted, that any lord of a manor having a particular interest, or being a trustee, and who shall (in the case of a commutation) pay any such expenses or costs, may, with the like consent of the said commissioners, charge such expenses and costs, together with the expenses he may reasonably incur in employing agents to protect his interests or otherwise, with interest thereon at the rate of four pounds per centum per annum, on the manor to which the same may relate, but so nevertheless that the principal charge on such manor shall be lessened in every year following such charge by one-twentieth part at least of such original charge thereon, and shall be subject to previous mortgages: Provided always, that the amount of such last-mentioned expenses shall have been previously submitted to, and shall have received the approval of the said commissioners or of an assistant commissioner."

Sect. 70. "And be it enacted, that from and immediately after the date of the final confirmation of the apportionment, in the case of any such enfranchisement as aforesaid, or from the date of the conveyance, deed or assurance by which the enfranchisement shall be effected, (as the case may be,) the several and respective lands shall stand charged and chargeable with the respective sums mentioned in such apportionment to be payable to the lord and steward or other officers respectively, with lawful interest for the same from the day mentioned in the said apportionment until payment thereof respectively; and until such respective payment or payments, the person or persons for the time being seized of the manor shall be deemed to stand seized of the said lands as mortgagee in fee thereof, for the benefit of the lords as to the sum payable to them, and of the said steward or other officers as to the sums payable to him or them, and subject to the power of continuing the charge as hereinbefore provided; and that it shall and may be lawful for the person so seized, or the lords or stewards respectively in his name, from time to time to adopt such means and proceedings as a mortgagee in fee of freehold lands is entitled to for the enforcing payment of such principal sums and interest, with the like right to obtain payment of all attendant and incidental costs and expenses; and the lord shall have power to distrain on the lands in respect of which the said sum or sums shall be payable, for the purpose of recovering payment of the interest that shall be due thereon, as fully and in like manner as if the same had been rent in arrear."

Sect. 71. "And be it enacted, that every such last-mentioned sum by this act charged on any lands shall be a first charge on such lands, and shall have priority over all mortgages, charges and incumbrances whatsoever affecting such lands, tithe rent-charge excepted, notwithstanding such mortgages, charges and incumbrances shall have been or shall be respectively made and created before such sums respectively shall be charged on such lands."

Sect. 72. "And be it enacted, that it shall be lawful for any tenant whose lands shall be enfranchised under this act to charge the same (or any of them, provided he shall hold the whole thereof under the same right and the same estate,) with the payment of such sums as aforesaid (and the

costs of such charges), and lawful interest thereon respectively, to any person who shall advance and lend such sums on the security of the lands so to be charged, and his executors, administrators and assigns; and for securing the payment thereof, with such interest, to demise the said lands by way of mortgage for any term of years to the person who shall lend such sums, his executors, administrators and assigns, or to such other person as he or they shall appoint, so as such demise be made with a proviso or condition declaring that such term shall be void on payment of the amount thereby secured, with interest thereon, at a time to be therein appointed; and such charge shall have the like priority with the original charge under this act, and with the powers and rights to which a first mortgagee would as mortgagee by demise be entitled (*p*)."

Sect. 73. "And be it enacted, that all monies to be paid under this act for enfranchisement from the lord's right shall be paid to the lord of the manor, his heirs or assigns, where he shall be absolutely seized as tenant in fee simple in possession of the manor, or where, as trustee for sale or otherwise, he has power to give an effectual discharge for such monies; and where such lord for the time being shall be only entitled for a limited estate or interest therein, or shall be under any legal disability, such money, subject to any allowance which may be made thereout in respect of deferred payments hereinbefore mentioned, shall, in case the same shall in the whole amount to or exceed the sum of two hundred pounds, with all convenient speed be paid into the Bank of England in the name and with the privity of the Accountant-General of the Court of Exchequer, to be placed to his account there *ex parte* "The Copyhold Commissioners," pursuant to the method prescribed by an act passed in the first year of the reign of his late majesty King George the Fourth, intituled "An Act for better securing Monies and Effects paid into the Court of Exchequer at Westminster on account of the Suitors of the said Court, and for the appointment of an Accountant-General and Two Masters of the said Court, and for other Purposes," and the general orders of the said court, and without fee or reward; and shall, when so paid in, therein remain, until the same shall, by order of the said court, made in a summary way upon petition to be presented to the said court by the person or persons who would have been entitled to the rents and profits of the said manor had no such enfranchisement been made as aforesaid, be applied in the purchase of or redemption of the land-tax, or in or towards the discharge of any debt or other incumbrance affecting the said manor, or affecting other lands standing settled therewith to the same or the like uses, trusts, intents or purposes as the said Court of Exchequer shall authorize to be purchased or paid, or such part thereof as shall be necessary; or until the same shall, upon the like application, be

(*p*) The 7 & 8 Vict. c. 55, s. 3, extends the provisions of this act, and of the 5 & 6 Vict. c. 23, as to charging and securing the consideration money of any enfranchisement, and as to the priority of

charges and otherwise, as well to cases in which there shall not, as to those in which there shall be an apportionment or enfranchisement.

laid out, by order of the said court, made in a summary way as aforesaid, in the purchase of lands, which shall be conveyed, limited and settled to, for and upon such and the like uses, trusts, intents and purposes as the said manor, or such of them as at the time of making such conveyance and settlement shall be existing undetermined and capable of taking effect (*q*); and in the meantime and until such purchase can be made, the same money may, by order of the said court, upon application thereto, be invested by the said accountant-general in his name, in the purchase of three pounds per centum consolidated bank annuities or three pounds per centum reduced bank annuities, or in government or real securities; and in the meantime and until such annuities or securities shall be ordered by the said court to be sold for the purposes aforesaid, or shall be called in or cancelled, the dividends or interest and annual produce thereof shall, from time to time, by order of the said court, be paid to the person or persons who would for the time being have been entitled to the rents and profits of the said manor, had no enfranchisement been made as aforesaid."

Sect. 74. "Provided always and be it enacted, that if any money to be paid for the enfranchisement from the lord's rights shall be less than the sum of two hundred pounds, and shall exceed the sum of twenty pounds, after such allowance for deferred payments as aforesaid, then the same shall, at the option of the respective parties for the time being entitled to the said manor the right of which shall be enfranchised, or of their respective husbands, guardians or committees, in case of coverture, infancy, idiotcy, lunacy or other incapacity, be paid into the Bank of England in the name and with the privity of the said accountant-general, and be placed to his account as aforesaid, in order to be applied in manner hereinbefore directed; or otherwise the same may be paid, at the like option, to two trustees, to be nominated by the respective parties exercising such option, and such nomination and approbation to be signified in writing under the hands of the nominating parties; and the money so paid to such trustees, and the dividends and produce so arising therefrom, shall be by such trustees applied in like manner as is hereinbefore directed with respect to the money to be paid into the Bank of England in the name of the accountant-general of the Court of Exchequer."

Sect. 75. "Provided also and be it further enacted, that when any money so to be paid as last hereinbefore mentioned shall not exceed the sum of twenty pounds for all the enfranchisements in such manor, the same shall be paid, if the said commissioners shall so direct, to the respective parties for the time being entitled to the said manor, for his own use and benefit, or, in case of coverture, infancy, idiotcy, lunacy or other incapacity, then such money shall be paid, for their use, to their respective husbands, guardians, committees or trustees: And in case any dispute shall arise as to the proper application, appropriation or investment of any enfranchise-

(*q*) The 6 & 7 Vict. c. 23, s. 14, in the case of the lord of a manor being entitled for a limited interest therein, or being under disability, gives an option of pay-

ing any enfranchisement money to trustees, to be applied as if paid into the bank under this section. Vide post, 1118.

ment money, according to the intention of this act, it shall be lawful for the said commissioners to decide such question, and their decision shall be final and conclusive thereon."

Sect. 76. "Provided always and be it enacted, that if any principal money shall be paid for enfranchisement to the lord of any manor not entitled by the provisions of this act to receive the same, the land in respect of which such principal money shall have been so paid shall continue charged with the payment thereof in favour of the person legally or equitably entitled to the same, but with such remedies against the person who shall have wrongfully received such money as purchasers are entitled to by the rules of law or equity."

Sect. 77. "And be it enacted, that all sums payable under this act for compensation to the steward, shall be paid to him, his executors or administrators."

Sect. 78. "And be it enacted, that the receipts of the persons to whom any sums of money shall be paid pursuant to this act shall be sufficient discharges for the same, and the person making such payment shall not be liable to see to the application of any such sums, or be answerable for the misapplication or nonapplication thereof; and for the better evidencing such payment, the steward for the said manor for the time being shall, as to steward's compensation, forthwith after payment thereof, and as to the payments for enfranchisements from the lord's rights, forthwith after production of receipt for the same, signed by the party entitled to sign the same, enter on the copy apportionment to be deposited with him as aforesaid a memorandum of such payment, and which memorandum shall, in like manner as such receipt, be deemed sufficient evidence of such payment, and discharge the lands and the person paying the same from the sums mentioned to be paid."

Sect. 79. "And be it enacted, that from and after the final confirmation of the apportionment, in the case of any commutation under this act, or upon the execution of the deed whereby any voluntary commutation may have been effected, the several lands included in such commutation shall be held by copy of court roll, and shall be conveyed by surrender and admittance, in all cases in which the same shall have been previously so held and conveyed respectively, and in all other cases shall be held and conveyed in such manner as the same are now by custom held and conveyed, and shall continue parcel of the same manors as such lands would have been held of if such commutation had not taken place, but the same lands shall thenceforth cease to be subject to the customs of borough english or gavelkind, or to any other customary mode of descent, or to any custom relating to dower or freebench or tenancy by the curtesy of England; and all the laws relating to descents, or to estates of dower, or estates by the curtesy of England, which shall for the time being affect and be applicable to lands held in free and common socage, shall thenceforth affect and be applicable to the lands included in every such commutation: Provided always, that nothing herein contained as to curtesy or dower or freebench shall extend or be applicable to the case of any husband or widow who shall have been or shall be married before the final confirmation of the commu-

tation apportionment, or the execution of such deed as aforesaid, or to alter or lessen, or in any way affect any right which the husband or widow of any person who shall be tenant of a manor at the time of the confirmation of the said apportionment would or might have had if such commutation had not been made."

Sect. 80. " Provided always and it is hereby expressly enacted and declared, that nothing in this act contained shall extend, or be held, deemed or construed to extend in any respect to affect, alter or vary the custom of gavelkind as the same now exists and prevails in the county of Kent, but the same custom shall in every respect prevail and continue to prevail and be exercised in the said county, in the same manner and to the same extent, in all respects and particulars, after this act shall have passed, as it has prevailed and existed heretofore, anything herein contained notwithstanding."

Sect. 81. " And be it enacted, that in the case of any enfranchisement under this act, from and after the final confirmation of the apportionment, or the execution of the conveyance, (as the case may be,) the several lands therein respectively comprised and enfranchised shall become and be in all respects of freehold tenure, but subject to the payment of the enfranchisement consideration in favour of the lords and steward or other officer as aforesaid; and all mortgages affecting the same shall be deemed and become mortgages of the freehold of the same lands for a corresponding estate, if such enfranchisement consideration shall be paid off, and if not so paid off, mortgages of the equity of redemption thereof, subject to such mortgage interest as aforesaid for securing such consideration: Provided always, that nothing herein contained shall operate to deprive any tenant of any commonable right to which he may be entitled in respect of such lands, but such right shall continue attached thereto notwithstanding the same shall become freehold: Provided also, that no such enfranchisement or conversion into freehold shall affect, except as aforesaid, any mortgage, or defeat the beneficial limitations of any will or settlement theretofore executed, or alter the descent or distribution of any estate or interest in land on the decease of any tenant or person entitled thereto in possession or remainder at the time of such enfranchisement or conversion."

Sect. 82. " And be it enacted, that no commutation under this act shall operate to affect any rights of lords of manors to escheats, fairs, markets, appointments, franchises, royalties, rights, liberties and privileges of chase and free warren, hunting, hawking, fowling, and of chasing and killing game and beasts of chase and free warren, and all ancient piscaries, fisheries and rights of fishing, or any rights in any mines and minerals or quarries within or under the said lands and hereditaments, or any other manorial rights whatever, unless expressly commuted under this act (r): Provided always, that nothing in this act contained shall operate to authorize or empower any lord of any manor to enclose any common or waste lands, or any part thereof."

(r) Ante, pt. 3, tit. " COURTS BARON," (Sect. 7, " Fruits of Tenure").

Sect. 83. " And be it enacted, that nothing herein contained shall operate to prevent any commutation or enfranchisement which may be made independently of this act: And that nothing in this act contained shall revive any right to fines or other manorial claims which now or hereafter shall be barred by any law in force for the limitation of actions or suits."

Sect. 84. " And be it enacted, that in aid of the reservation of the lord's rights in mines and minerals lastly hereinbefore contained, it shall be lawful for the tenants, upon any commutation or enfranchisement under this act, to grant to the lord of the manor such rights of entry and way, and other easements, in or upon and through their respective lands, as may be requisite for the purpose of enabling the said lord, or his agents or workmen, the more effectually to win and carry away any mines or minerals under the lands of such tenants or any of them; and that, for the purposes of such grant, it shall be sufficient, in the case of a commutation, to state the fact of such grant, and the consideration (if any) to be payable for the same, in the agreement for commutation; but in the case of an enfranchisement of lands (subject to the lord's rights in mines and minerals), such rights of entry and way, and other easements, shall be reserved and granted in the enfranchisement conveyance."

Sect. 85. " And whereas it is expedient that facilities should be afforded by courts of equity to parties desirous of obtaining a partition of their lands of copyhold or customary tenure, but doubts are entertained whether by the practice of such courts the same can now be obtained: Be it enacted and declared, that from and after the passing of this act, it shall be lawful for any court of equity, in any suit to be thereafter instituted therein for the partition of lands of copyhold or customary tenure, to make the like decree for ascertaining the rights of the respective parties to the suit in such lands, and for the issue of a commission for the partition of the same lands, and the allotment in severalty of the respective shares therein, as, according to the practice of such court, may now be made with respect to lands of freehold tenure (s)."

Sect. 86. " And be it enacted, that after the 31st day of December 1841, it shall be lawful for the lord of any manor, or his steward, or the deputy of such steward, to hold a customary court for such manor, notwithstanding at the time of holding the same there shall not be any person who shall hold lands of such manor by copy of court roll, and also notwithstanding, if there shall at the time of holding such court be any person or persons who shall hold lands of such manor by copy of court roll, there shall not be any such person present at such court, or there shall not be more than one such person present at such court; and every court so holden shall be deemed and taken for all purposes whatsoever to be a good and sufficient customary court: Provided always, that no proclamation made at any court so holden shall affect the right, title or interest of any person not present at the same, unless notice of such proclamation having been made shall be duly served within one month after such meeting shall have been holden,

(s) Vide pt. 1, p. 87, n.

on the persons whose right, title or interest may be affected by such proclamation (*t*).

Sect. 87. "And be it enacted, that after the 31st day of December 1841, it shall be lawful for the lord of any manor, or his steward, or the deputy of such steward, to grant, at any time and at any place, either within or out of such manor, and without holding a court for such manor, any lands, parcel of such manor, to be held by copy of court roll, or according to the custom of the said manor, which such lord shall for the time being be authorized or empowered to grant out to be held by copy of court roll, or according to such custom, so nevertheless that such lands be granted for such estate only, and to such person only as such lord, steward or deputy shall for the time being be authorized or empowered to grant the same (*u*)."

Sect. 88. "And be it enacted, that after the 31st day of December 1841, it shall be lawful for the lord of any manor, or his steward, or the deputy of such steward, to admit, at any time and at any place, either within or out of such manor, and without holding a court for such manor, any person as tenant to any lands, parcel of such manor, to be held by copy of court roll, or according to the custom of such manor, to and for which such person shall for the time being be entitled to be admitted (*x*)."

Sect. 89. "And be it enacted, that after the 31st day of December 1841, every surrender and deed of surrender which the lord shall be compellable to accept or shall accept, and also every will and codicil, a copy of which respectively shall be delivered to the lord of the manor of which the lands affected by such surrender, deed of surrender, will and codicil are parcel, or to his steward, or the deputy of such steward, either at any court holden for such manor at which there shall not be any homage assembled, or out of court, and also every grant and admission by the lord of any manor, or his steward, or the deputy of such steward, pursuant to this act, shall be forthwith entered on the court rolls of the manor by such lord, or steward, or deputy; and every entry made on the court rolls of any manor pursuant to this present clause shall, for all purposes whatsoever, be deemed and taken to be an entry made in pursuance of a presentment made at a court holden for such manor by the homage assembled thereat; and the steward, or his deputy, shall be entitled to the same fees and other charges for making such entry on the court rolls as he would have been entitled to in respect of such entry in case the same had been made in pursuance of a presentment made at a court holden for such manor by the homage assembled thereat (*y*)."

Sect. 90. "And be it enacted, that after the 31st day of December 1841, it shall not be essential in any case to the validity of the admission of any person, as tenant of any lands held of any manor by copy of court roll, or according to the custom of such manor, that a presentment shall be made by the homage assembled at any court holden for such manor of the surrender, will, or other instrument or fact, in pursuance or in consequence of which such admission shall have been granted."

Sect. 91. "Provided always and be it enacted, that where by the cus-

(*t*) Vide pt. 1, pp. 5, 102, n.

(*x*) Ibid.

(*u*) Vide pt. 1, p. 102, n.

(*y*) Vide pt. 1, p. 222, n.

tom of any manor the lord of such manor is authorized, with the consent of the homage of such manor, to grant any common or waste lands of such manor to be holden of the lord by copy of court roll, nothing in this act contained shall operate to authorize or empower the lord to grant any such common or waste lands without the consent of the homage assembled at a customary court holden for such manor, nor shall any court holden for such manor be deemed or taken to be a good or sufficient customary court for such purpose, unless the same shall have been duly summoned and holden according to the custom of such manor in such cases used and accustomed before the passing of this act, and unless there shall be present at such court a sufficient number of persons holding lands of such manor by copy of court roll to constitute according to such custom a homage assembled at such court (z)."

Sect. 92. "And whereas by the custom of certain manors the lords are restrained from granting licences to their tenants to alien their ancient tenements otherwise than by entireties; be it enacted, that from and after the passing of this act, it shall be lawful for any tenant of any such manor, by and with the licence of the lord of the manor, or the steward thereof, (which licence such lord is hereby authorized to give, or to empower the steward to give, by any writing under his hand, to be afterwards entered upon the rolls of the manor,) to dispose of his ancient tenement, or any part thereof, by devise, sale, exchange or mortgage, in such parcel or parcels as he shall think proper, but subject to the payment of such portion or portions of the yearly customary lord's rent payable for the whole of such ancient tenements as shall be set and apportioned upon such parcel or parcels by the lord of the manor of which such ancient tenement is holden, or his steward, or the deputy of such steward; and such parcel or parcels shall, except so far as the tenure or descent thereof shall be affected by this act, be held of the lord of the same manor in all respects, and shall be from time to time conveyed in such manner as any such original tenement has by custom been held and conveyed (a)."

Sect. 93. "And be it enacted, that no agreement, award, schedule of apportionment, or power of attorney, made or confirmed or used under this act, shall be chargeable with any stamp duty."

Sect. 94. "And be it enacted, that if any person under the provisions of this act shall wilfully give false evidence, he shall be deemed guilty of perjury; and if any person shall make or subscribe a false affidavit or declaration for the purposes of this act, he shall suffer the penalties of perjury; and if any person shall wilfully refuse to attend in obedience to any lawful summons of any commissioner or assistant commissioner, or to give evidence, or shall wilfully alter, withhold, destroy, or refuse to produce any book, deed, contract, agreement, account or writing, terrier, map, plan or survey, or any copy of the same, which may be lawfully required to be produced before the said commissioners or assistant commissioner, he shall be deemed guilty of a misdemeanor."

Sect. 95. "And be it enacted, that no action or suit shall be commenced against any commissioner, assistant commissioner, justice of the peace,

(z) Vide pt. 1, p. 23, and n.

(a) Vide pt. 1, p. 114, n.

valuer, umpire or surveyor, for any thing done under the authority of this act, until twenty one days' notice thereof shall have been given in writing to the party against whom such action or suit is intended to be brought, or after sufficient satisfaction or tender of amends shall have been made to any party aggrieved, or after three calendar months shall have expired from the commission of the act for which such action or suit shall be so brought; and every such action shall be brought, laid and tried in the county or place where the cause of action shall have arisen, and not in any other county or place; and if it shall appear that such notice of action or suit was brought before twenty-one days' notice thereof given as aforesaid, or that sufficient amends were made or tendered as aforesaid, or if any such action or suit shall not be commenced within the time before limited in that behalf, or such action shall be laid in any county or place other than as aforesaid, then the jury shall find a verdict for the defendant therein, or the court, upon summary application by motion in any such suit, may dismiss the same against such defendant; and if a verdict shall be found for such defendant, or such suit shall be dismissed upon application as aforesaid, or if the plaintiff in such action or suit shall become nonsuit, or suffer a discontinuance of such action, or if upon any demurrer in such action or suit judgment shall be given for the defendant therein, then such defendant shall have costs, charges and expenses as between attorney and client."

Sect. 96. "And be it enacted, that no order, adjudication or proceeding made or had by or before the said commissioners or any assistant commissioner under the authority of this act, or any proceeding to be had touching any offender against this act, shall be quashed for want of form, or be removed or removeable by certiorari or any other writ or process into any of her majesty's courts of record at Westminster or elsewhere."

Sect. 97. "And be it enacted, that the provisions of this act enabling tenants to grant rights of way or entry and other easements to the lord of the manor in or upon and through their respective lands for mining purposes; for enabling courts of equity to decree a partition of lands of copyhold or customary tenure; for enabling lords of manors or their stewards to hold customary courts although no copyhold tenant be present, and for enabling lords or their stewards to make, out of the manors and out of court, grants of lands to be held by copy of court roll; for enabling lords or their stewards to grant admissions out of the manors and out of court; and for requiring every surrender, will and codicil, a copy of which shall be delivered to the lord or steward, and every fact proved to the lord or steward at any court whereat a homage shall not be assembled, to be forthwith entered on the court rolls; and determining that presentment by the homage shall not be essential to the validity of an admission, shall extend and apply to manors or lands vested in her majesty in right of her crown and the Duchy of Lancaster, and to any enfranchisement of lands held of such manors to be affected under the powers given by any existing act or acts of parliament, and to the stewards and tenants for the time being of such manors."

Sect. 98. "And be it enacted, that, subject as is herein-before expressly

provided, nothing in this act contained shall be taken to apply to any manors or hereditaments vested in her majesty in right of her crown or of the Duchy of Lancaster."

Sect. 99. "And be it further enacted, that nothing in this act contained shall extend or be construed to extend to, or to prejudice or derogate from, the estate, right, title, interests, privileges or authority of the queen's most excellent majesty, her heirs and successors, in right or in respect of her Duchy of Cornwall, or the possessions thereof, or of the Duke of Cornwall for the time being, nor at any time or times be admitted in any court of law or equity, or otherwise construed as evidence upon any occasion to be admitted against or to affect in any manner such estate, right, title, interest, privileges or authority of her majesty, her heirs and successors, in right or in respect of her said Duchy of Cornwall, or the possessions thereof, or of the Duke of Cornwall for the time being."

Sect. 100. "And be it enacted, that this act shall extend only to England, Wales, and Ireland."

Sect. 101. "And be it further enacted, that this act may be amended or repealed by any act to be passed in this present session of parliament."

Sect. 102. "And be it enacted, that in the construction and for the purposes of this act, unless there be something in the subject or context repugnant to such construction, the word 'manor' shall extend to a manor or reputed manor, of whatever tenure the same may be, or to such portion or portions of a manor as the said commissioners shall, by any order in writing under their hands and seals, with the consent of the lord of the manor, signified by writing under his hand and seal, direct to be considered as a manor for the purpose of effecting any commutation or enfranchisement under this act; the words 'lord' and 'steward' shall include the person or persons for the time being filling those respective characters, or acting in those respective capacities, whether those persons shall be rightly or lawfully entitled to fill such characters or act in such capacities, or not, and the word 'steward' shall also include the clerk of any manor; the words 'tenant' or 'tenants' shall comprise all persons holding by copy of court roll, or as customary tenants, or holding lands subject to any manorial rights, and whether holden to them and their heirs, or whether granted to two or more to be holden in succession, or holden for life or lives or years; the words 'land' or 'lands' shall extend to and comprise lands holden by copy of court roll, or by custom of any manor, and lands holden of any lord of a manor in ancient demesne, and whether in fee or for life or lives, or for years, and shall also comprise all lands holden of a manor subject to any manorial rights, and shall extend to messuages, tenements, and corporeal or incorporeal hereditaments subject to manorial rights, or any undivided part or share therein; the word 'enfranchisement' shall extend to and include the discharge of freehold lands from heriots and other manorial rights; the word 'heriots' shall include money payments in lieu thereof; the word 'rents' shall include 'reliefs' and 'services,' not being service at the lord's court; and the word 'person' shall mean and include any body politic or corporate or collegiate, as well as an individual; and every word importing the singular number only shall mean and include

several persons or parties as well as one person or party, and several things as well as one thing respectively, and the converse ; and every word importing the masculine gender only shall mean and include a female as well as a male (*b*)."

N. B.—Copyholds are excepted out of the REGISTER ACTS of 2nd & 3rd Anne, c. 4, for the *West Riding of Yorkshire* ; the 6th Anne, c. 35, for the *East Riding of Yorkshire*, and the town and county of the town of *Kingston-upon-Hull* ; the 8th Geo. 2, c. 6, for the *North Riding of Yorkshire* ; and also the 7th Anne, c. 20, for *Middlesex* (*c*).

6 & 7 VICT. c. 23.

" *An act to amend and explain an act for the commutation of certain manorial rights in respect of lands of copyhold and customary tenure, and in respect of other lands subject to such rights, and for facilitating the enfranchisement of such lands, and for the improvement of such tenure.*"

" Whereas an act was passed in the fifth year of the reign of her present majesty Queen Victoria, intituled ' An Act for the Commutation of certain Manorial Rights in respect of Lands of Copyhold and Customary Tenure, and in respect of other Lands subject to such Rights, and for facilitating the Enfranchisement of such Lands, and for the Improvement of such Tenure,' and it is expedient to amend and explain the said act in certain respects: Be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that in addition and subject to the provisions contained in the said act, any enfranchisement made under the same may be made, either wholly or in part, for the consideration of a grant of an annual rent in fee to be thenceforth charged on and issuing out of the lands enfranchised, such annual rent to be valued in like manner and be subject to the like variation as the commutation rent-charge under the provisions of the said act ; and that in addition and subject to the provisions contained in the said act, any commutation or enfranchisement made under the same may be made, either wholly or in part, for the consideration of a conveyance of lands parcel of the same manor as the lands commuted or enfranchised, and subject to the

(*b*) See sect. 15 of 6 & 7 Vict. c. 23, post, 1118, extending that and the present act to all lands holden by copy of court roll, or by a custom of a manor for life or lives or for years, whether the tenant thereof have or have not a right of renewal, and extending the words " land or lands " to all corporeal or incorporeal hereditaments, whether subject to manorial rights or other-

wise.

(*c*) It has been very properly suggested, that as the interest of a lessee of *copyholds* is a common law interest, (see ante, pt. 1, p. 460,) it is advisable to register " such leases of copyhold estates as, if the *estate* were freehold, would require registry." Sugd. Vend. & Purch. vol. 3, pp. 365, 366.

same uses and trusts as the lands commuted or enfranchised shall be subject to at the time of such commutation or enfranchisement, or any right to mines or minerals in or under such lands, or any right to waste in lands belonging to such manor (*d*)."

Sect. 2. "And be it enacted, that if the consideration for the enfranchisement under the said act shall be, either wholly or in part, the grant of an annual rent, then it shall be lawful for the person empowered by the said act to obtain the enfranchisement of such lands to grant such annual rent to the person enfranchising such lands, and his heirs, to the uses, and upon and for the trusts, intents and purposes, to, upon and for which the manor of which such lands are parcel shall be subject and held at the time of such enfranchisement, and to charge such annual rent on all or such of the lands enfranchised as shall be fixed on, and to make the same payable by equal half-yearly payments; and the annual rent so granted shall be a rent-service, and thenceforth parcel of and appendant and appurtenant to the same manor as the lands enfranchised; and such annual rent may be granted either by deed, or by a schedule of appointment, to be made and signed pursuant to the directions of the said act and of this act."

Sect. 3. "And be it enacted, that if the consideration for the commutation or enfranchisement under the said act shall be, either wholly or in part, the conveyance of lands, or a right to mines or minerals, or a right to waste in lands belonging to such manor as aforesaid, then it shall be lawful for the person empowered by the said act to obtain such commutation or enfranchisement to convey the lands, or rights to mines or minerals, or rights to waste in lands belonging to such manor, fixed on as the consideration, either wholly or in part, for such commutation or enfranchisement, to the person commuting or enfranchising the lands proposed to be commuted or enfranchised, and his heirs, to the uses, and upon and for the trusts, intents and purposes, to, upon and for which the manor of which such lands are parcel shall be subject and held at the time of such commutation or enfranchisement."

Sect. 4. "And be it enacted, that if at any time while an annual rent shall remain charged on any lands under this act, the person for the time being seized in possession of such annual rent, or entitled to the receipt thereof, shall be so seized or entitled for a particular estate, (whether such estate shall have been subsisting at the time of the enfranchisement of such lands or not,) then it shall be lawful for such person, whether he shall be so seized or entitled in actual possession, or in remainder or reversion expectant on the determination of any estate for a term of years, to divide and apportion such annual rent, and to declare what part and proportion thereof shall be thenceforth severally charged upon each of the respective parcels of such lands between which such apportionment is intended to be made; and after such apportionment, such annual rent shall be chargeable upon and payable out of such lands only, and in such parts and proportions only as shall be so declared: Provided nevertheless, that it shall not be lawful for any person so seized or entitled as aforesaid in respect of an undivided share only of such annual rent, to divide and

(*d*) Vide ss. 15, 52, 56 of 4 & 5 Vict. c. 35, sup.

apportion such annual rent, unless the person for the time being enabled either by this act or otherwise to divide and apportion the same as respects the other undivided share thereof shall join in dividing and apportioning such annual rent."

Sect. 5. "And be it enacted, that if at any time while an annual rent shall remain charged on any lands under this act, the person seized of such lands in possession or entitled to the receipt of the rents, issues and profits thereof, shall be so seized or entitled for a particular estate, (whether such estate shall have been subsisting at the time of the enfranchisement of such lands or not,) then it shall be lawful for such person, whether he shall be so seized or entitled in actual possession, or in remainder or reversion expectant on the determination of any estate for a term of years, and with the consent of the copyhold commissioners, to concur in any division or apportionment of such annual rent, and to agree what part and proportion thereof shall be thenceforth severally charged upon each of the respective parcels of such lands between which such apportionment is intended to be made: Provided nevertheless, that it shall not be lawful for any person so seized or entitled as aforesaid in respect of an undivided share only of such lands to concur in or agree to any such division or apportionment, unless the person for the time being enabled, either by this act or otherwise, to concur in such division or apportionment as respects the other undivided share of such land, shall concur in or agree to such apportionment."

Sect. 6. "Provided nevertheless and be it enacted, that no division or apportionment shall be made under this act of an annual rent charged on any lands, unless with the concurrence and agreement of the person seized of such lands, or entitled to the receipt of the rents issues and profits thereof for an estate, in respect of which he is enabled, either by this act or otherwise, to concur in or agree to such apportionment, so as to render the same permanent and effectual."

Sect. 7. "And be it enacted, that every annual rent which shall be charged on any lands under the authority of this act shall be a first charge on such lands, and shall have priority over all mortgages, charges and incumbrances whatsoever affecting such lands, tithe rent-charge excepted, notwithstanding such mortgages, charges and incumbrances shall have been or shall be respectively made and created before such apportioned annual rent shall be charged on such lands."

Sect. 8. "Provided always and be it enacted, that a sub-lessee under any sub-lease, his executors, administrators or assigns, shall not, in consequence of any charge under this act either with an annual rent, or in consequence of any apportionment under this act either of an apportioned annual rent, or of any rent reserved in any lease, be liable to the payment of any greater sum of money than he would have been subject or liable to if such charge or apportionment had not been made."

Sect. 9. "Provided always and be it enacted, that if at the time of the conveyance under this act, in consideration either wholly or in part of the commutation or enfranchisement of any lands held by copy of court roll, there shall be subsisting in the lands so conveyed any lease (not being an under-lease), then the lessee under such lease, his executors, administrators

and assigns, shall pay, observe and keep to and with the person to whom such lands shall be so conveyed, or other the person for the time being seized of or entitled to such lands expectant on the determination of such lease, and his executors or administrators, the rent, reservations, covenants, conditions and agreements respectively reserved and contained in such lease, or such and so many or such part of the rent, reservations, covenants, conditions and agreements respectively reserved and contained in such lease as are or ought to be thenceforth respectively paid, observed and kept in respect of the lands so conveyed; and the person to whom such lands shall be so conveyed, or other the person so for the time being seized of or entitled as aforesaid, shall and may from time to time make or bring all such distresses, actions, suits or entries for non-payment of such rent or reservations, or for non-performance of the covenants, conditions and agreements in such lease respectively reserved and contained, as could, in case such conveyance had not been made, have been made or brought by the person making such conveyance, or other the person for the time being seized of or entitled to the reversion expectant on the determination of such lease; and that in all such distresses, actions, suits and entries, the rent, reservations, covenants, conditions and agreements in such lease reserved and contained on the part of the lessee, his executors, administrators or assigns, shall be deemed and taken to be annexed to an immediate reversion vested in the person to whom such lands shall be so conveyed, or other the person for the time being so seized of or entitled to such lands as aforesaid."

Sect. 10. " Provided always and be it enacted, that if at the time of any commutation or enfranchisement under the said act or under this act of any lands, there shall be subsisting in such lands any lease (not being an underlease), then the lessee under such lease, his executors, administrators and assigns, shall pay, observe and keep to and with the person for the time being seized of or entitled to the lands so commuted or enfranchised, and his executors or administrators, the rent, reservations, covenants, conditions and agreements respectively reserved and contained in such lease, or such and so many or such part of the rent, reservations, covenants, conditions and agreements respectively reserved and contained in such lease, as are or ought to be thenceforth respectively paid, observed and kept in respect of the lands so commuted or enfranchised; and the person for the time being seized of or entitled to the lands so commuted or enfranchised shall and may from time to time make or bring all such distresses, actions, suits or entries for non-payment of such rent or reservations, or for non-performance of the covenants, conditions and agreements in such lease respectively reserved and contained, as could have been made or brought by the person who would for the time being have been entitled to the lands so commuted or enfranchised in case such commutation or enfranchisement had not been made; and in all such distresses, actions, suits and entries, the rents or reservations, covenants, conditions and agreements in such lease reserved and contained on the part of the lessee, his executors, administrators or assigns, shall be deemed and taken to be annexed to an immediate reversion vested in the person for the time being seized of or entitled to the lands so commuted or enfranchised."

Sect. 11. "And whereas it is provided by the said act that whenever so many as twelve persons being tenants or all the tenants of any manor shall agree with the lord for the commutation or enfranchisement of their lands, it shall be lawful to effect such commutation or enfranchisement by a schedule of apportionment; and it is desirable to permit a schedule of apportionment to be adopted when a less number of tenants of any manor than twelve are desirous of effecting a commutation or enfranchisement: be it enacted, that it shall be lawful to effect a commutation or enfranchisement by a schedule of apportionment, in the manner provided by the said act, whenever so many as six persons being tenants of any manor shall at the same time agree with the lord for the commutation or enfranchisement of their lands(e)."

Sect. 12. "And be it enacted, that if any manor, or any part thereof, shall be subject to the payment of any fee-farm rent or other charge not exceeding the amount of the annual quit rents payable to the lord of such manor, it shall be lawful for the said commissioners to direct that so much of the money to be received for enfranchisement in any such manor under the provisions of the said recited act or this act, as they shall consider adequate, shall be paid into the Bank of England in the name and with the privity of the accountant-general of the Court of Chancery, to be placed to his account there ex parte the copyhold commissioners, and to be applied under the directions of the said Court of Chancery in paying or redeeming the said charge, and in exonerating therefrom the land which shall be enfranchised, and indemnifying the owners of such land, and otherwise as the said court shall direct, on petition in a summary way, as provided for in the case of other money to be paid into the Bank of England under the said act; and every such fee-farm rent or other charge shall be paid to the person entitled thereto at the same time, and subject to the same deductions for land tax or otherwise, but to no others, as if no enfranchisement had taken place; and when provision shall have been so made for any such charge, it shall be lawful for the said commissioners to direct that the remainder of the money to be paid for enfranchisement, and the surplus income of the money so paid into the Bank of England, after payment of all expenses attending the payment of such fee-farm rent or other charge to the person entitled thereto, shall be applied in like manner as if no such charge had existed: and thenceforth no land which shall be enfranchised in such manor shall be chargeable with or liable to the payment of any greater part of the said fee-farm rent or other charge than the amount of the quit rent theretofore payable out of such land, but to that extent the said land shall continue and be chargeable with and liable to the payment of the said fee-farm rent or other charge, and shall be subject to the like remedies for the recovery thereof as if such quit rent continued payable; and the said commissioners shall state in the deed, schedule or other instrument of enfranchisement the amount of such quit rent or liability in every case, and such statement shall be conclusive against the owners of the said land: Provided nevertheless, that it shall be lawful for the said commissioners, whatever may be the amount of such fee-farm rent or other charge,

(e) Vide s. 56 of 4 & 5 Vict. c. 35, sup.

with the consent of the person entitled thereto, to direct, if they shall see fit, that any other security in land or money which they shall consider sufficient for the purpose, shall be substituted for the payment of money into the Bank of England in manner aforesaid, and in that case, or in any case, and whatever may be the amount of such fee-farm rent or other charge, with the consent of the person entitled as aforesaid, to direct that all or any part of the land to be enfranchised shall be entirely released from the payment of the said fee-farm rent or other charge, and the same land shall thenceforth be released accordingly."

Sect. 13. "And whereas it is provided by the said act, that whenever the estate of any party to an enfranchisement under the said act shall be less than an estate of fee simple in possession, or corresponding copyhold or customary estate, notice in writing shall be given to the person entitled to the next estate of inheritance in remainder or reversion in the manor or land to be affected by such enfranchisement; be it enacted, that in case any tenant whose estate shall be less than an estate of fee simple as aforesaid shall be a party to an enfranchisement under the said act or this act, and shall pay the whole of the price of enfranchisement, so that no part thereof or of the expenses thereof shall be charged on the inheritance of the land to be enfranchised, it shall not be necessary that the person entitled to the next estate of inheritance or remainder or reversion shall have notice of such enfranchisement (*f*)."

Sect. 14. "And be it enacted, that when any lord of a manor shall be only entitled for a limited estate or interest therein, or shall be under any legal disability, any money to be paid under the said act or under this act for enfranchisement from the lord's rights shall, at the option of the respective parties for the time being entitled to the said manor the rights of which shall be enfranchised, or of their respective husbands, guardians or committees, in case of coverture, infancy, idiotcy, lunacy or other incapacity, be paid into the Bank of England, in the name and with the privity of the said accountant-general, and be placed to his account, in order to be applied in manner as in the said act directed, or otherwise the same may be paid, at the like option, to the trustees acting under the will, conveyance or settlement under which such lord having such limited interest shall hold or be entitled to or interested in the said manor of which the lands so to be enfranchised shall be parcel, or if there are no such trustees, then into the hands of trustees to be nominated under the hands and seal of the said commissioners; and the money, when so paid to such trustees, shall be applied by the said trustees, with the consent of the said commissioners, in the manner directed and specified by the said act of and concerning any money to be paid for enfranchisement under the said act into the Bank of England, in the name and with the privity of the said accountant-general; and upon every vacancy in the office of such trustee, some other fit person shall be appointed by the said commissioners in like manner."

Sect. 15. "And be it enacted, that the said recited act and this act shall be construed to extend to all lands holden by copy of court roll or by a custom of a manor for life or lives or for years, whether the tenant thereof

(*f*) Vide a. 56 of 4 & 5 Vict. c. 35, sup.

have or have not a right of renewal; and that the words 'land or lands' shall extend to all corporeal and incorporeal hereditaments whatsoever, whether subject to manorial rights or otherwise, or any undivided part or share therein."

Sect. 16. "And be it enacted, that this act shall be taken and construed to be a part of the said recited act."

7 & 8 VICT. c. 55.

"An act to amend and explain the acts for the commutation of certain manorial rights in respect of lands of copyhold and customary tenure, and in respect of other lands subject to such rights; and for facilitating the enfranchisement of such lands, and for the improvement of such tenure."

"Whereas an act was passed in the session of parliament holden in the fourth and fifth years of the reign of her present majesty Queen Victoria, intituled 'An Act for the Commutation of certain Manorial Rights in respect of Lands of Copyhold and Customary Tenure, and in respect of other Lands subject to such Rights; and for facilitating the Enfranchisement of such Lands, and for the Improvement of such Tenure,' and was amended and explained by an act passed in the session of parliament holden in the sixth and seventh years of the reign of her present majesty; and it is expedient further to amend and explain the said acts in certain respects: be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the provisions of the aforesaid acts, or either of them, as to the recovery of expenses, costs and charges to be paid by any tenant, being a trustee, and not beneficially interested in the lands of which he stands admitted tenant, to be affected by any commutation or enfranchisement under the aforesaid acts or this act, shall extend as well to cases in which there shall not be an apportionment on commutation or enfranchisement in pursuance of the said aforesaid acts or this act, as to cases in which there shall be an apportionment on commutation or enfranchisement in pursuance thereof (g)."

Sect. 2. "And be it enacted, that every person beneficially interested in the said lands, having a limited beneficial interest only, and who shall pay any such expenses, costs and charges to any tenant, being such trustee as aforesaid, may, with the consent of the copyhold commissioners under their hands, and by a simple entry on the court rolls of the manor, and for which entry the steward shall only charge thirteen shillings and four-pence, and which shall not be subject to any stamp duty, charge such expenses, costs and charges, with interest thereon at the rate of four pounds per centum per annum, on the lands to which the same relate; but so nevertheless that the principal charged on such lands be lessened in every year following such charge one-twentieth at least of such original charge, and shall be subject to previous mortgages (h)."

Sect. 3. "And be it enacted, that as to any lands to be affected by any commutation or enfranchisement without apportionment under the aforesaid

(g) Vide s. 67 of 4 & 5 Vict. c. 35, sup. (h) Vide s. 68 of 4 & 5 Vict. c. 35, sup.

acts or this act, or any of them, of which the tenant, being a trustee and not beneficially interested therein, stands admitted tenant, the person beneficially interested therein at the date of the confirmation of the commutation agreement, or at the date of the conveyance deed or other assurance by which the enfranchisement is made, as the case may be, shall be deemed for all purposes in regard to expenses, costs and charges which any such trustee may have to pay under the aforesaid acts or this act, to be the person beneficially interested in such lands within the meaning of the aforesaid acts and this act respectively (i)."

Sect. 4. "And be it enacted, that the provisions of the aforesaid acts, or either of them, charging and securing, and authorizing the charging and securing of the consideration money of any enfranchisement under the said acts, and the costs of the charges, with interest, and also as to the priority of the charges and securities of or for the same, and otherwise in reference thereto, shall, *mutatis mutandis*, extend as well to cases in which there shall not be an apportionment on enfranchisement in pursuance of the aforesaid acts or this act, as to cases in which there shall be an apportionment on enfranchisement in pursuance thereof; and on any enfranchisement where there shall not be such apportionment, the charge of the consideration money of the enfranchisement, and the interest thereon, shall commence and be computed from the date of the conveyance, deed or assurance by which the enfranchisement shall be made."

Sect. 5. "And be it enacted, that, in addition and subject to the provisions of the aforesaid acts or either of them, any commutation or enfranchisement may be made wholly or in part for the consideration of a conveyance of lands, or of any right to mines or minerals, although the said lands or the said right to mines or minerals so to be conveyed shall not be parcel of or situate in or under the lands of the same manor as the lands so to be commuted or enfranchised; Provided that the said lands or the said right to mines or minerals can be conveniently held with the same manor in the opinion of the copyhold commissioners, and are subject, so far as the difference of tenure may permit, to the same uses and trusts as the lands so to be commuted or enfranchised shall be subject to at the time of such commutation or enfranchisement, or to uses and trusts in correspondence with which the said lands shall be then settled at law or in equity; and that it shall be lawful for the person empowered by the aforesaid acts to obtain such commutation or enfranchisement to convey the said lands or rights to mines and minerals to the person commuting or enfranchising the lands proposed to be commuted or enfranchised, and to his heirs, to the uses, and upon and for the trusts, intents and purposes, to, upon and for which the manor of which the lands commuted or enfranchised are parcel shall be subject and held at the time of such commutation or enfranchisement; subject always, as to any leases to which such lands may be subject, to all the provisions of the last-mentioned act in respect to lands therein permitted to be conveyed (k)."

Sect. 6. "And be it enacted, that in case any trustee nominated by the

(i) Vide s. 72 of 4 & 5 Vict. c. 35,
sup.

(k) Vide ss. 15, 52, 56 of 4 & 5 Vict.
c. 35, sup.

copyhold commissioners under the aforesaid acts or this act should be desirous of resigning, or should become incapable of acting, the commissioners may, if they shall think proper, appoint some other fit person in like manner as if a vacancy had occurred under the provisions of the secondly hereinbefore recited act."

Sect. 7. "And be it enacted, that the provisions of the said first hereinbefore recited act, authorizing distress and entry in cases of nonpayment of the rent-charge authorized by the aforesaid act to be granted, shall extend and be applicable to all rent-charges granted and made payable under and by virtue of the said secondly hereinbefore recited act or this act."

Sect. 8. "And be it enacted, that this act shall be taken and construed to be part of the aforesaid acts, and that all proceedings which may have been had, and all commutations and enfranchisements which may have taken place under the said recited acts or either of them, and all matters and things incident thereto, shall be of the same force, validity and effect as if the provisions of this act had been contained in the said first recited act."

Sect. 9. "And be it enacted, that this act may be amended or repealed by any act to be passed in the present session of parliament."

Copyhold Commission.

The copyhold commissioners find very many parties anxious to enfranchise or commute copyhold incidents, but unable to make up their minds as to proper terms on which to base their bargain.

The commissioners are hardly yet in a position to give distinct and positive opinions on the precise value of the respective rights of lord and tenant, in answer to all the applications made to them from different parts of the kingdom, and from manors very differently circumstanced. Under these circumstances they think it may be desirable to print the following tables, as likely to assist persons anxious to avail themselves of the act for enfranchising or commuting copyholds, but doubtful as to the terms they ought to propose or agree to.

The tables are so arranged as to indicate the separate value of each copyhold incident, and have been compiled, as far as they go, from authentic sources of information.

The commissioners have not felt themselves justified in giving the names of manors or parties, but the terms given may be relied on as having been acted on in enfranchisements made previous to the existence of the commission.

The commissioners are fully aware that the information which they have here given is incomplete. They propose, therefore, hereafter to arrange

and publish the additional materials which are still coming into their hands.

In the case of quit rents, arbitrary fines and heriots, the following tables may perhaps be found generally useful.

There are cases of copyholds paying small fines certain, in which the incidents have little or no value, and in which therefore the sum paid on enfranchisement is obviously the consideration for the mere change of tenure. Two years' purchase of the land has been usually given in many cases in the southern counties of England.

TABLES of Terms on which Enfranchisements may be made, with Suggestions for general Rules.

Counties included in Tables.	Counties included in Tables.	Counties not included in Tables.
Berks	Lincoln	Bedford
Bucks	Middlesex	Derby
Cambridge	Norfolk	Hereford
Chester	Nottingham	Lancaster
Cornwall	Oxford	Leicester
Cumberland	Salop	Monmouth
Devon	Somerset	Northampton
Dorset	Southampton	Northumberland
Durham	Stafford	Rutland
Essex	Suffolk	Surrey
Gloucester	Sussex	Warwick
Herts	Westmorland	Worcester
Hunts	Wilts	WALES (12 Counties.)
Kent	York	

TABLE I.—*Terms on which Lands subject to Quit Rents were enfranchised.*

County.	Manor.	Years' purchase.	County.	Manor.	Years' purchase.
Berks..... 1	Manor A	25	Norfolk..... 1	Manor A	25
2	Manor B	25	2	Manor B	30
3	Manor C	25	3	Manor C	30
Bucks 1	Manor A	25	4	Manor D	25
Cambridge .. 1	Manor A	25	Nottingham .. 1	Manor A	25
2	Manor B	30	Somerset 1	Manor A	27
Chester 1	Manor A	25	2	Manor B	25
Cornwall 1	Manor A	27	3	Manor C	25
Cumberland.. 1	Manor A	30	4	Manor D	25
2	Manor B	30	Southampton.. 1	Manor A	25
Devon 1	Manor A	25	2	Manor B	25
2	Manor B	25	3	Manor C	25
3	Manor C	25	4	Manor D	26
Dorset 1	Manor A	25	5	Manor E	25
Essex..... 1	Manor A	27	Stafford 1	Manor A	25
Gloucester .. 1	Manor A	25	Suffolk 1	Manor A	25
2	Manor B	25	Sussex 1	Manor A	27
3	Manor C	25	2	Manor B	27
4	Manor D	25	3	Manor C	20
5	Manor E	25	4	Manor D	25
6	Manor F	25	5	Manor E	25
7	Manor G	27	6	Manor F	27
8	Manor H	25	7	Manor G	25
Herts..... 1	Manor A	25	8	Manor H	26
2	Manor B	30	9	Manor I	27
Kent 1	Manor A	28	10	Manor J	27
Lincoln 1	Manor A	25	Westmorland.. 1	Manor A	25
Middlesex 1	Manor A	27	2	Manor B	30

It appears, therefore, that in thirty-five cases twenty-five years purchase was taken, but in some cases a higher average was taken, never exceeding thirty years, and in one case twenty years purchase only was taken.

TABLE II.—*Terms on which Copyholds of Inheritance were enfranchised from arbitrary Fines.*

County.		Manor.	Years' purchase.	
Cambridge	.... 1	Manor A ..	4½	
Gloucester	.... 1	Manor A ..	8½	
Herts	..... 1	Manor A ..	5 to 6	
	2	Manor B ..	5½ to 6	
Hunts	..... 1	Manor A ..	6	
Nottingham	.. 1	Manor A ..	10	
	2	Manor B ..	7	
Stafford	..... 1	Manor A ..	4	
	2	Manor B ..	4	} with a deduction of 15 to 30 per cent. according to state of repair.
Sussex	..... 1	Manor A ..	6	On admission of heir and purchaser.
	2	Manor B ..	4	On admission of purchaser.
	3	Manor C ..	6	
	4	Manor D ..	5 to 6	
	5	Manor E ..	6	
	6	Manor F ..	5	
	7	Manor G ..	5½	
	8	Manor H ..	5½	
	9	Manor I ..	6	
	10	Manor J ..	6	
	11	Manor K ..	8	
Westmorland.	. 1	Manor A ..	4½	
York, w. R.	.. 1	Manor A ..	5 to 7	

TABLE III.—*Terms on which Copyholds held for three Lives were enfranchised.*

County.		Manor.	Years' purchase.			Age of Lives.
Berks	1	Manor A	7½	..	..	42 43 14
	2	Manor B	8	..	..	37 33 17
	3	Manor C	6	..	..	53 20 60
Bucks	1	Manor A	7	..	..	15 10 13
Chester	1	Manor A	„	{ Reversion 7½ Houses Ct. 5½. }		24 33 25
Cornwall ..	1	Manor A	8	..	..	38 32 7
Devon	1	Manor A	12	..	..	16 3 11
	2	Manor B	16½	..	..	40 37 15
Dorset	1	Manor A	6	..	..	35 30 25
Gloucester ..	1	Manor A	6			
	2	Manor B	6			
	3	Manor C	6	{ Extra charge for advanced age £7 16s. }		
	4	Manor D	7	..	..	24 9 6
	5	Manor E	7	..	..	24 9 6
	6	Manor F	6			
	7	Manor G	6			
Somerset ..	1	Manor A	1½	..	..	14 14 13
	2	Manor B	7½	..	..	44 17 9
	3	Manor C	7	..	..	54 48 45
	4	Manor D	5½	..	..	7 6 5
Southampton	1	Manor A	7½	..	..	22 20 30
	2	Manor B	8			
	3	Manor C	7	..	..	36 24 20
Sussex	1	Manor A	6			
	2	Manor B	8	..	..	73 50 50
	3	Manor C	8	..	..	— 23 19
	4	Manor D	10			
Wilts	1	Manor A	7½	..	..	26 21 16

TABLE IV.—*Terms on which Copyholds held for six Lives were enfranchised.*

County.		Manor.	Years' purchase.	Age of Lives.
Gloucester	1	Manor A	4	{ 60 25 23 26 28 13
	2	Manor B	4	
	3	Manor C	4	
	4	Manor D	4	
	5	Manor E	4	
	6	Manor F	4	
	7	Manor G.	4	

TABLE V.—*Terms on which Copyholds held for five Lives were enfranchised.*

County.		Manor.	Years' purchase.	Age of Lives.
Somerset	1	Manor A	6	{ 64 38 17 23 24
	2	Manor B	6	{ 25 24 80 40 22

TABLE VI.—*Terms on which Copyholds held for single Lives were enfranchised.*

County.		Manor.	Years' purchase.	Age of Tenant.
Cambridge	1	Manor A .. .	3	48
	2	Manor B	2 $\frac{3}{4}$	50
	3	Manor C	3	34

TABLE VII.—*Terms for which Lands were enfranchised from Heriots.*

County.	Manor.	Heriots.			
			£	s.	d.
Hunts	Manor A.	Heriots 2 $\frac{1}{2}$..			
Oxford.. ..	Manor A.	Heriots 2 $\frac{1}{2}$..			

TABLE VIII.—Sums paid for single Heriots.

County.	Manor.	Heriots.	Consideration.	
Gloucester	Manor A . . . . .	.....	£	s. d.
	Manor A . . . . .	.....	13	0 0
	Manor A . . . . .	.....	6	0 0
	Manor A . . . . .	.....	16	7 0
Somerset	Manor B	On death or surrender	41	2 6
	Manor A	On surrender only	21	0 0
	Manor B	On death or surrender, in kind	14	0 0
	Manor C	On death only, in kind	21	0 0
Southampton	Manor D	On death or surrender	14	0 0
	Manor D	On death only	15	0 0
	Manor E . . . . .	.....	19	0 0
	Manor F	19 heriots at 20s. each	1	0 0
Sussex	Manor G	Heriot	1	0 0
	Manor H	Heriot 6d. on death or alienation	1	0 0
	Manor I	Heriot 5s., at 28 years	7	0 0
	Manor J	2 Heriots (being best beasts) arising out of 8 acres of land	30	0 0
	Manor K	2 Heriots (being best beasts) in respect of 1a. 2r. Op. of land	30	0 0
	Manor L	5 Heriots	100	0 0
	Manor M	Heriot (best beast) on death or alienation (freehold tenement)	13	6 8
	Manor N	11 Heriots on death or surrender at 20l. each	220	0 0
	Manor O	Heriot on death	13	6 8
	Manor P	1 Heriot out of 40 acres of land	11	0 0
	Manor Q	Heriot	0	1 0
	Manor R	Heriot a sheep of the value of	1	10 0
	Manor A	3 Heriots being 3 parcels	17	2 0
	Manor A . . . . .	.....	
Westmorland				

{

reducing the scale for more than 1 heriot.

{

sheep heriot, or 6d. on death or alienation.

}

{

1 parcel 10l., 2 parcels 15l., every additional parcel 9l. 9s.

}

Copyhold Commission.**TERMS FOR ENFRANCHISEMENTS.**

The experience of the copyhold commissioners enables them now to state that enfranchisements are very usually made on something like the following terms. The commissioners are aware that the terms stated may not accurately apply to any given case, but still they have been found to be of service to parties desirous of carrying the act into execution. Such parties have, of course, the power of adjusting them to the particular circumstance of their own dealings.

Twenty-five Years for Quit Rents.

Copyholds of Inheritance (Fines Certain).—One year's value.

Copyholds of Inheritance (Fines Arbitrary).—Four to six years' value.

Copyholds for Three Lives.—Six years' value.

Copyholds for Six Lives.—Four years' value.

Heriots.—Two heriots and a half on the average of the three last heriots.

The commissioners are of opinion that the compensation to stewards ought in no instance to exceed one set of fees, which is to pay all charges for the instruments necessary to complete the enfranchisement.

N.B.—These terms as to copyholds for lives are based less on the actual experience of the commissioners than on examination of the records of transactions in the redemption of land-tax. It is obvious that the different ages of existing lives must vary the terms of such bargains.

8 & 9 VICT. c. 106.

"An Act to amend the Law of real Property."

"BE it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows, (that is to say,)

Sect. 1. "That so much of an act passed in the last session of parliament, intituled 'An Act to simplify the Transfer of Property,' as enacted that, after the time at which that act should come into operation, no estate in land should be created by way of contingent remainder, but that every estate which, before that time, would have taken effect as a contingent remainder should take effect (if in a will or codicil) as an executory devise, and (if in a deed) as an executory estate of the same nature, and having the same properties as an executory devise, and that contingent remainders existing under deeds, wills or instruments, executed or made before the time when that act should come into operation, should not fail, or be destroyed or barred, merely by reason of the destruction or merger of any preceding estate, or its determination by any other means than the natural effluxion of the time of such preceding estate, or some event on which it was in its creation limited to determine, shall be and is hereby repealed as from the time of the commencement and taking effect thereof; and that the residue of the said act shall be and is hereby repealed as from the 1st of October 1845 (a)."

Sect. 2. "That, after the said 1st day of October 1845, all corporeal tenements and hereditaments shall, as regards the conveyance of the immediate freehold thereof, be deemed to lie in grant as well as in livery; and that every deed which, by force only of this enactment, shall be effectual as a grant, shall be chargeable with the stamp duty with which the same deed would have been chargeable in case the same had been a release, founded on a lease or bargain and sale for a year, and also with the same stamp duty (exclusive of progressive duty) with which such lease or bargain and sale for a year would have been chargeable."

Sect. 3. "That a feoffment made after the said 1st day of October 1845, other than a feoffment made under a custom by an infant, shall be void at law unless evidenced by deed; and that a partition, and an exchange, of any tenements or hereditaments, not being copyhold, and a lease, required by law to be in writing, of any tenements or hereditaments, and an assignment of a chattel interest, not being copyhold, in any tenements or hereditaments, and a surrender in writing of an interest in any tenements or hereditaments, not being a copyhold interest, and not being an interest which might by law have been created without writing, made after the said 1st day of October 1845, shall also be void at law, unless made by deed:

(a) Vide allusion to the now repealed to that and the present act, ante, pt. 1, act, ante, pt. 1, p. 138, n.; and reference pp. 401, 402, n.

Provided always, that the said enactment so far as the same relates to a release or a surrender shall not extend to Ireland.

Sect. 4. "That a feoffment made after the said first day of October 1845, shall not have any tortious operation; and that an exchange, or a partition, of any tenements or hereditaments, made by deed, executed after the said 1st day of October 1845, shall not imply any condition in law; and that the word 'give' or the word 'grant' in a deed, executed after the same day, shall not imply any covenant in law, in respect of any tenements or hereditaments, except so far as the word 'give' or the word 'grant' may, by force of any act of parliament, imply a covenant."

Sect. 5. "That under an indenture, executed after the 1st day of October 1845, an immediate estate or interest in any tenements or hereditaments, and the benefit of a condition or covenant respecting any tenements or hereditaments, may be taken, although the taker thereof be not named a party to the same indenture; also that a deed, executed after the said 1st day of October 1845, purporting to be an indenture, shall have the effect of an indenture although not actually indented."

Sect. 6. "That, after the 1st day of October 1845, a contingent, an executory, and a future interest (*b*), and a possibility coupled with an interest, in any tenements or hereditaments of any tenure, whether the object of the gift or limitation of such interest or possibility be or be not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent, into or upon any tenements or hereditaments in England of any tenure, may be disposed of by deed; but that no such disposition shall, by force only of this act, defeat or enlarge an estate tail; and that every such disposition by a married woman shall be made conformably to the provisions, relative to dispositions by married women, of an act passed in the third and fourth years of the reign of his late majesty King William the Fourth, intituled 'An Act for the Abolition of Fines and Recoveries, and for the Substitution of more simple Modes of Assurance,' or in Ireland of an act passed in the fourth and fifth years of the reign of his said late majesty, intituled 'An Act for the Abolition of Fines and Recoveries, and for the Substitution of more simple Modes of Assurance, in Ireland.' "

Sect. 7. "That, after the 1st day of October 1845, an estate or interest in any tenements or hereditaments in England of any tenure, may be disclaimed by a married woman by deed; and that every such disclaimer shall be made conformably to the said provisions of the said act for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance."

Sect. 8. "That a contingent remainder, existing at any time after the 31st day of December 1844, shall be, and, if created before the passing of this act, shall be deemed to have been capable of taking effect, notwithstanding the determination by forfeiture, surrender or merger, of any preceding estate of freehold, in the same manner in all respects as if such determination had not happened."

(*b*) As to contingent and reversionary interests, vide pt. 1, p. 137 et. seq.; and see precedent of deed of disposition of a contingent interest in copyholds, ante, 905.

Sect. 9. " That when the reversion expectant on a lease, made either before or after the passing of this act, of any tenements or hereditaments of any tenure, shall, after the said 1st day of October 1845, be surrendered or merge, the estate which shall for the time being confer as against the tenant under the same lease the next vested right to the same tenements or hereditaments shall, to the extent and for the purpose of preserving such incidents to and obligations on the same reversion, as, but for the surrender or merger thereof, would have subsisted, be deemed the reversion expectant on the same lease."

Sect. 10. " That this act shall not extend to Scotland."

RULES OF COURT.

COURT OF COMMONS.

Rules and Times of Court under the Act of 3 & 4 Will. 4. c. 74. for the Abolition of Fines and Recoveries [&c.].

Hilary Term 1834.

WHEREAS it has been found expedient to make alterations in the general rules made at Michaelmas Term last in this court, for the purpose of carrying into effect the statute passed in the third and fourth years of the reign of our present majesty, c. 74. intitled "An Act for the Abolition of Fines and Recoveries, and for the Substitution of more simple Modes of Conveyance;"

And whereas it is necessary to make orders touching the amount of the remuneration fees and charges to be taken by the several persons appointed to carry the purposes of the said act into execution: and it will be convenient that all the orders and regulations made by the court under the said act should be contained in the same rule:—

Now it is hereby ordered, that the said general rules be and the same are hereby revoked: provided that this present rule shall not be construed in any respect to invalidate any proceedings which before the first day of March next ensuing shall have been taken, pursuant to the direction of the said rules of Michaelmas Term last.

And it is hereby further ordered, that where any acknowledgment shall be made by any married woman of any deed under and by virtue of the said act, before commissioners appointed under the said act, one at least of the said commissioners shall be a person who is not in any manner interested in the transaction giving occasion for such acknowledgment, or concerned therein as attorney, solicitor or agent, or as clerk to any attorney, solicitor or agent so interested or concerned.

And it is further ordered, that before the commissioners shall receive such acknowledgment, they, or in case one of them shall be interested or concerned as aforesaid, then such one of them as shall not be so interested or concerned, do inquire of every married woman, separately and apart from her husband and from the attorney or solicitor concerned in the transaction, whether she intends to give up her interest in the estate to be passed by such deed, without having any provision made for her in lieu of, or in return for, or in consequence of her so giving up such interest; and where such married woman in answer to such inquiry shall declare that she intends to give up such her interest without any provision, and the said commissioners shall have no reason to doubt the truth of such declaration and shall verily

believe the same to be true, then they shall proceed to receive the said acknowledgment; but if it shall appear to them, or to such one of them as aforesaid, that it is intended that provision is to be made for any such married woman, then the commissioners shall not take her acknowledgment until they are satisfied that such provision has been actually made by some deed or writing produced to them; or if such provision shall not have been actually made before, then the commissioners shall require the terms of such intended provision to be shortly reduced into writing, and shall verify the same by their signatures in the margin at the foot or at the back thereof.

And it is hereby further ordered, that the affidavit verifying the certificate to be made pursuant to the said act, and which certificate shall be in the form contained in the said act, shall (except in such cases where the acknowledgment shall be taken elsewhere than in England, Wales or Berwick-upon-Tweed) be made by some practising attorney or solicitor of one of the courts at Westminster, or of one of the counties palatine of Lancaster or Durham; and that in all cases it shall be deposed, in addition to the verification of the said certificate, that the deponent (or if more than one person join in the affidavit, that one or more of the deponents) knew the person or persons making such acknowledgment, and that at the time of making such acknowledgment the person or persons making the same was or were of full age and competent understanding, and that one at least of the commissioners taking such acknowledgment, to the best of his deponent's knowledge and belief, is not in any manner interested in the transaction giving occasion for the taking of such acknowledgment, or concerned therein as attorney, solicitor or agent, or as clerk to any attorney, solicitor or agent so interested or concerned; and that the names and residences of the said commissioners, and also the place or places where such acknowledgment or acknowledgments shall be taken, shall be set forth in such affidavit; and that, previously to such acknowledgment being taken, the deponent had inquired of such married woman, (or if more than one, of each of such married women,) whether she intended to give up her interest in the estate to be passed, and also the answer given thereto; and where any such married woman in answer to such inquiry shall declare that she intends to give up her interest without any provision, the deponent shall state that he has no reason to doubt the truth of such declaration, and he verily believes the same to be true. And where any provision has been agreed to be made, the deponent shall state that the same has been made by deed or writing, or, if not actually made before, that the terms of the intended provision have been reduced into writing, which deed or writing he verily believes has been produced to the said (judge,) (master or) commissioners.

And it is hereby further ordered, that the affidavit shall state the parish or several parishes, or place or several places, and the county or counties in which the several premises wherein any such married woman shall appear to be interested shall by deed be described to be situate.

And it is hereby further ordered, that the affidavit shall be in the form

hereunto annexed, subject to such variations as the circumstances of the case shall render necessary, or such affidavit may be made where it is found convenient by one of the said commissioners, with such variation in the form thereof as shall be necessary in that behalf (a).

And it is hereby further ordered, that the certificates and affidavits verifying the same shall, within one month from the making the acknowledgment, be delivered to the proper officer appointed under the said act, and that the officer shall not after that time receive the same without the direction of the court or a judge.

And it is hereby further ordered, that the fees (b) or charges to be paid for the copies to be delivered by the clerks of the peace, or their deputies, or by the officer of the said court, and for taking acknowledgments of deeds, and for examining married women, and for the proceedings, matters and things required by the said act to be had, done and executed for completing and giving effect to such acknowledgments and examinations, shall be as follows:—

	£	s.	d.
To a judge or master for taking the acknowledgment of every married woman, of which 7s. 6d. will be paid in the case of a judge to his clerk, and the residue thereof will be paid over to the treasury; and in the case of a master the whole will be paid over to the treasury, or the fee fund account of the Court of Chancery	1	6	8
To the two perpetual commissioners for taking the acknowledgment of every married woman, when not required to go further than a mile from their residence, being 13s. 4d. for each commissioner	1	6	8
To each commissioner, when required to go more than one mile, but not exceeding three miles, besides his reasonable travelling expenses	1	1	0
To each commissioner, where the distance required shall exceed three miles, besides his reasonable travelling expenses	2	2	0
To the clerk of the peace, or his deputy, for every search ..	0	1	0
To the same, for every copy of a list of commissioners, provided such list shall not exceed the number of 100 names	0	5	0
To the same, for every further complete number of fifty names an additional	0	2	6
To the officer, for every search	0	1	0
To the same, for every official copy of the certificate	0	2	6
To the same, for every official copy of a list of commissioners, provided such list shall not exceed the number of 100 names	0	5	0

(a) Vide in the matter of Scholfield, 3 N. C. 293.

(b) These fees are not altered by the

late table of fees, sanctioned by the judges as costs in the superior courts.

	£	s.	d.
To the same, for every further complete number of fifty names additional	0	2	6
To the same, for preparing every special commission, including a fee of 5s. to the clerk of the chief justice or other judge for the fiat	0	15	0
To the same, for examining the certificate and affidavit, and filing and indexing the same, as required by the said act of the 3 & 4 Will. 4, c. 74	0	5	0

And it is hereby further ordered, that the fees and charges to be paid for the entries of deeds required by the said act to be entered on the court rolls of manors, and for the indorsements thereon (c), and for taking the consents of the protectors of settlements of land held by copy of court roll, where such consents shall not be given by deed, and for taking surrenders, by which dispositions shall be made under the said act, by tenants in tail of lands held by copy of court roll, and for entries of such surrenders, or the memorandums thereof, on the court rolls, shall be as follows:—

	£	s.	d.
For the indorsements on the deed of the memorandum of production, and memorandum of entry on court rolls, to be signed by the lord steward or deputy steward, each indorsement of memorandum, 5s., together	0	10	0
For the entries on the court rolls of deeds, and the indorsements thereon, at per folio of seventy-two words	0	0	6
For taking the consent of each protector of settlement of lands	0	13	4
For taking the surrender by each tenant in tail of lands....	0	13	4
For entries of such surrenders, or the memorandums thereof, on the court rolls, at per folio of seventy-two words	0	0	6

FORM OF AFFIDAVIT verifying the Certificate of Acknowledgment, taken in pursuance of the act of parliament, to be made by some practising ATTORNEY or SOLICITOR, and to be sworn before a Judge of the COURT OF COMMON PLEAS, or a Commissioner appointed for taking affidavits in the said court.

IN THE COMMON PLEAS.

A. B. of — in the — of — gentleman, one of the attornies [*or* “solicitors”] of the Court of —, maketh oath and saith that he knows — the wife of —, in the certificate hereunto annexed mentioned, and that the acknowledgment therein mentioned was made by the said —, and the certificate signed by the judge or master, or by *A. B.* of &c., and *C. D.* of &c., the commissioners in the said certificate mentioned, on the day and year therein mentioned, at — in the

(c) See sects. 51, 53, 59.

This is to be
omitted when
acknowledgment
taken by a judge
or master.

— of — in the presence of this deponent, and that at the time of making such acknowledgment the said — was of full age and competent understanding, and that the said — knew the said acknowledgment was intended to pass her estate in the premises respecting which such acknowledgment was made. [*And this deponent further saith, that to the best of this deponent's knowledge and belief, neither of the said commissioners is (or the said A. B., or the said C. D., one of the said commissioners, is not) in any manner interested in the transaction giving occasion for such acknowledgment, or concerned therein as attorney, solicitor or agent, or as clerk to any attorney, solicitor or agent so interested or concerned.*] And this deponent further saith, that previous to the said — [*the married woman*] making the said acknowledgment, he this deponent inquired of the said — [*the married woman*], [*or if more than one, of each of them the said — and — (the married women,)*] whether she intended to give up her interest in the estates in respect of which such acknowledgment was taken without having any provision made for her in lieu of, or in return for, or in consequence of her so giving up her interest in such estates, and that in answer to such inquiry the said — [*the married woman*] declared that she did intend to give up her interest in the said estates without having any provision made for her in lieu of, or in return for, or in consequence of her so giving up such her interest; of which declaration of the said — [*the married woman*] this deponent has no reason to doubt the truth, and verily believes the same to be true; [*or declared that a provision was to be made for her in consequence of her giving up such her interest in the said estates.*] And this deponent lastly saith, that before her acknowledgment was so taken, he was satisfied, and does now verily believe, that such provision has been made by deed or writing, or that the terms thereof have been reduced into writing, and that such deed or writing has been produced to the said judge, master or commissioners.] And lastly this deponent saith, that it appears by the deed acknowledged by the said — [*the married woman*] that the premises wherein she is stated to be interested are described to be in the parish or place of —, or parishes or places of —, and —, in the county of —, or counties of — [*as the case may be*].

Sworn, &c.

N.B. When the whole of the facts cannot be spoken to by one deponent, variations may be made to enable more than one deponent to state their respective parts of the affidavit.

Trinity Term, 4 Will. 4.

It is ordered, that from and after the last day of this term, where such parts of the affidavit verifying the certificate of acknowledgment, taken in pursuance of the late act of parliament respecting fines and recoveries, as state "the deponent's knowledge of the party making the acknowledgment, and her being of full age," cannot be deposed to by a commissioner, or by an attorney or solicitor, the same may be deposed to by some other person, whom the person before whom the affidavit shall be made shall be considered competent so to do.

And it is further ordered, that where more than one married woman shall at the same time acknowledge the same deed respecting the same property, the fees directed by the said rules to be taken shall be taken for the first acknowledgment only.

And the fees to be taken for the other acknowledgment or acknowledgments, how many soever the same may be, shall be one half of the original fees; and so also where the same married woman shall at the same time acknowledge more than one deed respecting the same property.

And where, in either of the above cases, there shall be more than one acknowledgment, all such acknowledgments may be included in one certificate and affidavit.

In every case the acknowledgment of a lease and release shall be considered and paid for as one acknowledgment only.

APPENDIX

TO THE

TREATISE ON COURTS BARON AND COURTS LEET.

RULES TO BE OBSERVED IN HOLDING A COURT LEET AND COURT BARON.

Calling the court.

THE first preparatory step is, for the steward to issue his precept to the bailiff of the manor to give the accustomed notice of the day appointed for the court. The following would appear to be the more usual form:—

(Precept to summon a court leet and court baron.)

The manor of — } To W. Y. bailiff of the said manor, greeting.
in the county of — }

THESE are to require you to give notice within the said manor, that the court leet or law day and view of frankpledge, with the court baron of A. Z. esquire, lord of the said manor, will be holden at the house of — at — within the said manor on — the — day of — next, at the hour of — in the forenoon, and to warn all the residents and freehold tenants of the said manor personally to be and appear at the place and time aforesaid to do and perform their suit and service, and pay their quit rents, fines and other duties as of right they ought to perform and render the same at such courts respectively: And also to warn all constables, tything-men and other public officers of the aforesaid leet and manor then and there to attend and make and return their several presentments: And you are hereby required to summon twelve or more good and lawful men of the said manor to be and appear at the aforesaid place and time, to inquire as well for our sovereign lady the queen as the lord of the said leet, of all such matters as to the said court do appertain; and be you there personally with the names of the persons you shall have so summoned, bringing with you also this precept. Given under my hand and seal this — day of —, in the year of our Lord —.

J. S. steward. (L. s.)

On receiving the precept, the bailiff is to affix a written notice of the day and hour appointed for the court to the door of the parish church, or cause such notice to be publicly read in church or otherwise, as the usage may be;

and it is proper to give this notice at least fifteen days before the court (a). The form of it may be thus:—

The manor of ——— } Notice is hereby given, that a court leet or
in the county of ——— } law day and view of frankpledge, and a court
 baron of A. Z. esquire, lord of the said manor, will be holden for the said
 manor on ——— the ——— day of ——— next, at ——— o'clock in the forenoon,
 at the usual and accustomed place, being the house of ——— at ——— in
 the said county of ———, when and where all the resiants and freehold
 tenants of the said manor, and all public officers of the said leet and manor,
 and others concerned in the business of such courts respectively, are re-
 quired to attend. Dated this ——— day of ——— &c.

W. Y., bailiff (b).

THE COURT DAY.

(*Records of the court leet, manor rolls &c.*)

It behoves the steward to be prepared with the records of the court leet and the manor rolls for such references as may be necessary to his guidance as the judge of the court leet, and as assessor and register of the court baron, in which the suitors are the judges (c); and also with a minute book for the entry of the proceedings of the particular court, having the style of the court already written in it.

And should it be the first court which the steward has holden for the particular manor, he will do well to read his appointment to the stewardship to the tenants and resiants assembled, previously to his entering on the business of the day.

(*Opening of the court.*)

The bailiff is then to open the court by an audible proclamation, which (i. e. the Oyez) is to be repeated three times (d), thus—

Oyez, Oyez, Oyez; All manner of persons who owe suit and service to the court leet and law day, and the court baron of A. Z. esquire, lord of this manor, now to be holden, or who have been summoned to appear at this time and place, draw near and give your attendance, every man answering to his name when called, and thereby saving his amercement:

(a) But a shorter period is sufficient, ante, pt. 3, p. 684, n.

(b) If there is not a leet appendant to the manor, the form may be,—

The Manor, } Notice is hereby given
 &c. } to all persons whom it may
 concern, that a general court baron of
 A. Z. esquire, lord of the said manor,
 will be holden at ——— in and for the
 said manor on ——— the ——— day of
 ———, at eleven o'clock in the forenoon,
 when and where all persons holding freely

of the said manor are required to attend, and to perform their suit and service, and pay their respective rents and reliefs due to the lord of the said manor. Dated &c.

See ante, p. 827, for forms of precept and notice of holding a *customary* court baron

(c) Ante, pt. 3, p. 604.

(d) In a court leet three proclamations are required to be made, but only one is necessary in a court baron; Kitch. 11, 12, cites 21 Ed. 4, 37.

God save the queen and the lord of this leet. [If it should be a court baron only, the words in italics are to be omitted.]

(*Resiant roll, suit roll, jury list.*)

The bailiff is now to be called upon to make a return of the precept, which he is to do by putting the resiant roll, suit roll and jury list into the hands of the steward; who should first call over the names of the resiants, marking against such as appear, "*app.*," and against such as are essoigned, "*ess.*" (*e*).

Then the suit roll is to be called over, and the mark "*app.*" placed against the names of those who answer.

This being done, the steward will read the list of jurors, entering the names of those who appear in his minute book (*f*), and then proceed to administer the oath to them in this manner:—

(*Oath of the foreman.*)

A. B., you, as foreman of this jury, with the rest of your fellows, shall inquire and true presentment make of all such things as shall be given you in charge, and of all such other matters as shall come to your knowledge, presentable at this court: The queen's counsel, your own and your fellows', you shall well and truly keep: You shall present nothing out of hatred or malice, nor conceal anything through fear, favour or affection, but in all things you shall true and just presentment make, according to the best of your understanding: *So help you God.*

Then swear the rest of the jury by three or four at a time, thus:—

The like oath which *A. B.* your foreman hath taken on his part, you and every of you shall well and truly observe and keep on your respective parts: *So help you God.*

And after the bailiff shall have signified the desire of the court for all men to keep silence, the steward will deliver his—

CHARGE to the jury of the court leet,

to the following purport:—

THAT it is the steward's province to remind the jury that the court leet (frequently called a law day) is a court of record of great antiquity, and accounted the queen's court, to which all persons resident within the jurisdiction of it, of the age of twelve years or upwards, with the exception of peers and prelates (*g*), and tenants in ancient demesne (*h*), owe suit and service, and that it is their duty to present and amerce such as make default.

(*e*) Ante, pt. 3, p. 686.

(*g*) See as to exceptions, ante, pt. 3, p. 685.

(*f*) There must be twelve jurors; and if a sufficient number do not attend, the steward may compel any strangers to be sworn. Ante, pt. 3, p. 702, 703.

(*h*) Ante, pt. 2, p. 582, 583; pt. 3, p. 685, n. (*a*).

THAT they are to present the names of such proper officers as either by the common law, or by the particular usage of the manor &c. for which the court is held, are generally chosen and sworn at the leet, such as constables (*i*), tithingmen, aleconners &c.; and to inquire of and present any neglect in the duties of the several public officers within the precincts of the leet.

THAT if any offence was presented at the last court by way of admonition, and the party has not obeyed the terms which were enjoined, it is their duty to certify the default to the court, in order that the amercement set for it may be levied; but that the jurisdiction of the leet jury, like that of the grand jury, is confined to things done or neglected to be done since the last court, and to things happening immediately before their being sworn, and during their sitting (*j*).

THAT it is their province to inquire of and present all acts of petty treason, and the crimes of murder and manslaughter, (as felony,) rape, arson, burglary, larceny, accessaries, voluntary escape, and every other description of felony (*k*), and also negligent escape; in order that such offences (though not punishable in leet) may be certified to the queen's justices according to the rules prescribed by law: and that they are likewise to inquire what lands and tenements, goods and chattels, any felon had at the time the felony was committed.

THAT it is also their province to inquire of and present all assaults and batteries with bloodshed; all railers, common scolds, eves-droppers and sowers of discord; all conspiracies and combinations of victuallers, labourers and artificers; the several offences of exacting excessive tolls; neglecting to pursue hue and cry lawfully raised; of vagrancy and noctigavancy, and the receivers of any such evil characters; of buying and selling by false weights and measures, and violating any assize; of forestallers, ingrossers and regraters; and of all offences directed to be inquired of in leets by particular acts of parliament, as for instance the act of 1 Eliz. c. 17, intituled "An Act for Preservation of Spawn and Fry of Fish" (*l*).

AND LASTLY, that it is the duty of the jury to inquire of and present all obstructions of public bridges, ways and paths; the stoppage or diversion of all public watercourses; the removal or destruction of landmarks, and any pound breaches; the neglect of cleansing pools, or of enclosing stone, marl and other the like pits, or of the reparation of bridges and causeways; the laying of dung, soil or other offensive thing in any public highway; and also every other act which may tend to the injury or nuisance of any of the queen's liege subjects (*m*).

(*i*) Vide 2 & 3 Vict. c. 93, and 3 & 4 Vict. c. 88, for the establishment of county and district constables by the authority of justices of the peace.

(*j*) Ante, pt. 3, pp. 722, 726. And note that by custom an adjournment of a court leet is good. Ante, pt. 3, pp. 724, 726; post, p. 1147.

(*k*) Ante, pt. 3, p. 730 et seq.

(*l*) See this statute towards the end of the appendix; and also the extract from it, ante, pt. 3, pp. 692, 693.

(*m*) The author has not enumerated deodands, estrays, waifs, treasure trove and the like, among the presentments to be made by the jury of a court leet, as those franchises

When the jury are so sworn and charged, the bailiff is to make further proclamation thus:—

Oyez, Oyez, Oyez ;

If any person or persons can inform this court or inquest of any treason, felonies, bloodshed, or any other offence, matter or thing now given in charge, let them come in, and they shall be heard.

If any appear, the steward is to administer the following oath, and then the evidence is to go to the jury.

(The oath of a person offering to give evidence of treason, &c.)

The evidence you shall give to the inquest now sworn shall be the truth, the whole truth, and nothing but the truth : *So help you God.*

The steward will then administer the following oath to the several freehold tenants, constituting the homage of the court baron.

(Oath of the foreman.)

You, as foreman of this homage, with the rest of your fellows, shall inquire and true presentment make of all such things as shall be given to you in charge, and of all such other matters as shall come to your knowledge, presentable at this court: you shall present nothing out of hatred or malice, nor conceal any thing through fear, favour or affection, but in all things shall true and just presentment make, according to the best of your understanding : *So help you God.*

Then swear the rest of the homage, by three or four at a time, thus:—

The like oath which *A. B.*, your foreman, hath taken on his part, you and each of you shall well and truly observe and keep on your respective parts : *So help you God.*

And then the steward will deliver his

CHARGE to the homage

to the following purport:—

THAT the court baron is not a court of record, and is altogether different in its character from the court leet.

THAT in the latter (which is deemed the queen's court) the steward presides as judge, but that in the court baron, which is the lord's court, the homage are the judges; and that the steward (though a constituent part of the court (n)) sits there as register and assessor only.

THAT it is their duty, as the homage of the court baron, and possessing judicial authority, to inquire of the general rights of the lord of the manor,

are not necessarily incident to a leet, even when it is appended to a hundred or manor, though they may, it should seem, be claimed by the lord of a leet *by prescription*, and then of course they should

be inquired of as in the court baron. See *Br. Estray*, pl. 15; *Ib. Incidents* 38; *Ib. Leet* 43.

(n) *Ante*, pt. 3, p. 605.

and more particularly of such as may have accrued subsequently to the then last court, bearing in recollection that such seignioral rights as are referable to land of customary or copyhold tenure are not within the jurisdiction of the court baron, but are to be inquired of only in the court denominated the customary court.

That the attention of the homage is especially to be directed to any possible advantages to the lord by reason of any reliefs payable on death, or otherwise by the custom of the manor (*o*); or by reason of any escheats occasioned by the death of any of the freehold tenants, without leaving heirs inheritable to their lands (*p*); or in consequence of the forfeiture of freehold lands by any felonious act; or of any deodands, estrays, waifs, treasure trove, or other manorial franchises (*q*).

That it is also the duty of the homage to inquire whether any boundary stones or landmarks between the particular manor and any other manor, or between the lands of any of the free tenants, may have been removed; and whether any encroachments may have been made upon the wastes of the lord (*r*), or upon the commonable rights of such tenants; and of any breach of the lord's pound; and whether the several persons who owe suit and service to that court have duly attended to render and perform the same, or wherein and by whom any default may have been made, and to set a reasonable amercement on any such defaulters (*s*), unless, as regards the freehold tenants, the lord of the manor should prefer resorting to his remedy of a distress for the neglect of suit (*t*); and generally to inquire of all rights, and of all offences, both of commission and omission, as between the lord and the freehold tenants of the manor, and as between tenant and tenant, with reference particularly to any existing by-law established by the custom of the manor (*u*); and to make their presentments and orders accordingly (*x*).

(*o*) Ante, pt. 3, p. 618 et seq.

(*p*) Ante, pt. 3, p. 631 et seq.

(*q*) Ante, pt. 3, pp. 643, 647, 649, 655.

(*r*) The inclosure of a common is a private wrong only, 9 Co. 113 *a*; and a common that has been inclosed for a great number of years cannot afterwards be thrown upon. 1 Vern. 32; ante, pt. 1, p. 520, n. (*u*).

(*s*) Ante, pt. 3, pp. 615, 616, 621 et seq.

(*t*) Ante, pt. 3, p. 615, 616.

(*u*) Ante, pt. 3, p. 601, n.; p. 625 et seq.

(*x*) N.B. The steward is not bound to receive any presentments whereby the rights of the lord may be prejudiced. 1 Vol. Ca. & Opin. 172.

It is the better opinion that all the freehold tenants present at a court baron may claim to be put upon the homage.

In *Arlett v. Ellis*, 7 Barn. & Cress. 368, Bayley, J. said, "The homage are persons associated together at the lord's court (at which all the tenants of the manor may attend) to act as between the lord and his tenants." But it should seem that if the homage obstinately refuse to make such presentments as the nature of their oath requires of them, the steward would be justified in dissolving the court, or in discharging the homage and swearing another, and the latter would be the more desirable course. See 1 Vol. Ca. & Opin. 172, 173.

The case of *The King and Hemingway*, 1 Barnardiston, K. B. 436, may, the author submits, be properly introduced in this note: it is thus reported: "On rule to show cause why an information should not be granted against the defendant, as under-

Whilst the jury of the leet are absent preparing their presentments, the steward may proceed in the business of the court baron. [See Precedent of Rolls of Court Baron, post, 1149.]

On receiving the presentments from the homage, the steward will administer the following oaths to the Affeerors and the Hayward.

(Affeeror's Oath.)

You shall well and truly affeer and assess the several amercements now to you remembered, and therein spare no one through fear, favour or affection, nor enhance any one through prejudice, hatred or malice: *No help you God.*

(Hayward's Oath (y).)

You shall well and truly execute the office of Hayward for this manor, until you be thereof discharged according to due course of law. You shall

steward to the Archbishop of York of his manor of Otley in that county, for soliciting a jury at a court baron and customary court holden there to present the dying seised of such a one twenty-three years ago of certain copyhold lands, and then discharging that jury because they would not find this, and swearing another for this particular purpose, who accordingly did find such dying seised, though oath was made upon the former motion that such finding was false, for the party himself did not die but seventeen years ago; Mr. Fazakerley now said, that he hoped the rule should be discharged. He submitted it, that by law a steward may swear a second jury, when the first jury refuses to find such things which their oath obliges them to inquire into. But in this case there were two particular reasons for doing it; one, because the foreman in the first jury was a party interested in the question, the other, because the jury charged with this presentment consisted of freeholders as well as copyholders, whereas the law requires that copyholders only shall present the death of copyholders: and this is the peculiar business of the customary court; whereas the freeholders only are the persons concerned in matters relating to the court baron: and therefore he insisted, that as there were distinct courts kept at this time, there

ought to have been distinct juries. The Chief Justice said, he did believe indeed, that according to the antient law, there were always separate juries in these cases; but of late years the practice has been so universal to join them together, that the freeholders must be intended to speak to such things as relate to the court baron, and the copyholders to such things as relate to the customary court. Then as to the foreman's being a party interested, he said, there was a now [enough] of the jury without him, and therefore that reason could not be sufficient for changing the jury. However in general, he said, he took it, that it would be a thing of dangerous consequence to allow a steward to solicit a jury to find any thing against their consciences, and upon their refusal to do it, to swear a new jury. Accordingly the court made the rule absolute for granting the information."

(y) The author has placed the Hayward's oath under the head of court baron, as the office appears to be more immediately connected with that court than with a court leet; but the Hayward is frequently sworn at the leet, being chosen by the jury under an ancient usage, and it is then considered as a public annual office, conferring a settlement under 3 W. & M. c. 11, s. 6, like the office of a hog-ringer. Ante, pt. 3, pp. 719, 720, and n.

from time to time present all pound breaches, estrays, waifs, and all other matters and things falling within the duties of your office, justly, and without favour or affection: *So help you God.*

The author has shown that it is seldom necessary or desirable to administer the oath of fealty to a newly admitted tenant (z). When it is deemed expedient, the following form will serve.

(*Oath of Fealty.*)

You swear to become a true and faithful tenant to A. Z. esq., lord of this manor, for the estate to which you have made your acknowledgment of tenure at this court; you shall from time to time bear, pay and perform all such rents, duties, services and customs in respect of the same estate as are due and of right accustomed: you shall from time to time be ordered and justified in all things at the lord's court, to be holden in and for this manor, as other the tenants of this manor are, shall or ought to be, and you shall in all things demean yourself as a faithful tenant ought to do: *So help you God.*

When the leet jury have agreed on their presentments, they are to re-enter the court, and the steward will ask,—

Gentlemen,—Have you agreed on your presentments? to which they will reply, *yes*; and the presentments are then to be handed over by the foreman to the steward, who will say, Gentlemen, do you desire and consent that I should alter any matters of form in your presentments, not altering matters of substance? to which the jury reply, *yes*.

Then the steward will enter the presentments in his minutes, and swear the officers presented by the jury (a), and proceed to the affeermment of the several amercements, and to the general business of the court leet, according to the tenor of the presentments. [See Precedent of Roll of Court Leet, post.]

(*The Bedell or Bailiff's Oath.*)

You shall well and truly serve our sovereign lady the queen, and the lord of this leet, in the office of bailiff for the year ensuing, or until you shall be thereof discharged according to due course of law: you shall duly execute all process to be directed unto you from the steward of this court, and diligently and faithfully collect and account for all rents, profits and revenues, and in all things demean yourself as a true and faithful bailiff ought to do: *So help you God.*

(z) Ante, pt. 1, p. 362; pt. 3, p. 615.

(a) Ante, 1141.

(The Constable's [or Tithingman's] Oath.)

You shall well and truly serve our sovereign lady the queen, and the lord of this leet, in the office of constable for the parish [tithing or hamlet] of —, for the term of one whole year next ensuing, or until you be thereof discharged according to due course of law: you shall execute all lawful process sent to you, and by hue and cry or otherwise use your utmost endeavours to apprehend and secure all felons, riotous, disorderly and idle persons, and others guilty of a violation of the laws of this realm, and shall in all things faithfully and diligently demean yourself in the aforesaid office: *So help you God.*

(The Aleconner's Oath.)

You shall well and truly serve our sovereign lady the queen, and the lord of this leet, in the office of aleconner or assizer for the parish [tithing or hamlet] of —, for the term of one whole year next ensuing, or until you be thereof discharged according to due course of law: you shall present all offences cognizable by this court which may come to your knowledge, without fear, favour or affection, and in all things faithfully and impartially discharge the duties of the aforesaid office: *So help you God.*

(The Affeeror's Oath.)

[See this form as applicable to courts baron, ante, 1145.]

(Adjournment of the Court.)

[If it should be found necessary, the court may be adjourned (b) by a proclamation to be made by the bailiff thus:

Oyez, Oyez, Oyez.

All manner of persons who have any thing more to do at this court have leave to depart, giving their attendance here again at — o'clock of this day.

On the re-assembling of the court, the bailiff is to make the following proclamation:

Oyez, Oyez, Oyez.

All manner of persons who were adjourned over to this time and place draw near and answer to your names, each person as he shall be called.

Then the steward should call over the jury list of the leet.]

The above proceedings are to be entered by the steward in his minute book, ending thus:

It is further agreed and ordered, that the steward of this court may alter

(b) Ante, 1142, n.

matters of form in these presentments, not altering matters of substance ; and then he will subjoin these words :

“ We present this as our verdict,”

to which the jury and homage will subscribe their names,

<i>A. B.</i>	}	Jury	men.	|	<i>A. B.</i>	}	Homagers.
<i>C. D.</i>					<i>C. D.</i>		
&c.					&c.		

When the bailiff will discharge the court by the following proclamation :

Oyez, Oyez, Oyez.

All manner of persons who have appeared this day at the court leet and court baron of, &c., may now depart, keeping their day and hour on a new summons.

God save the queen, &c.

PRECEDENTS OF COURT ROLLS, &c.

ROLLS OF COURT BARON.

*The manor of —, } The Court Baron of A. Z. esquire, lord of the said
in the county of —. } manor, holden in and for the said manor on — the
— day of —, in the — year of the reign of our sovereign lady
Victoria, by the grace of God of the United Kingdom of Great
Britain and Ireland queen, defender of the faith, and in the year of our
Lord —, before (a)*

Homage $\left\{ \begin{array}{l} A. B. \text{ Foreman.} \\ C. D. \\ E. F. \\ \&c. \end{array} \right\}$ Sworn. $\left\{ \begin{array}{l} P. Q. \\ R. S. \\ T. W. \\ \&c. \end{array} \right\}$

respectively suitors of the said court.

Present also, J. S., steward.

W. Y., bailiff.

(Presentment of tenants neglecting to perform their Suit.)

At this court the homage being sworn, and charged by the steward upon the articles of the court baron, do upon their oaths present, that G. H., I. K., L. M., N. O., &c., respectively freehold tenants

This amercement is affeered at the sum of 5s. for each defaulter, by us,

Affeerors $\left\{ \begin{array}{l} A. B. \\ C. D. \end{array} \right\}$ Sworn.

of this manor, have neglected to appear and to perform the suit and service which they owe at this court, and they are respectively in mercy (b).

(Presentment of the death of a freeholder, and proclamation for the heir to take up his estate.)

At this court the homage also present, that T. B., who held to him and his heirs, freely, of the lord of this manor a messuage or tenement and

(a) By prescription a court baron may be held before the steward. Ante, pt. 3, p. 605.

(b) It is the more usual way for the homage to adjudge the party to be amerced in general terms, according to this form, though sometimes they amerce in a particular sum, which would seem to be good without affeerment; it is, however, not unusual, when the latter practice pre-

vails, to submit the reasonableness of the amercement to affeerors. Ante, p. 3, p. 622 et seq.

But it is to be recollected that the lord may distrain for subtraction of suit, as well as for neglect of fealty, assuming the land to be of ancient tenure. Ante, pt. 3, pp. 616, 617; post, "Forms of Warrants, &c."

about — acres of land, situate at —, with the appurtenances, by fealty, suit of court, heriot, relief, and the yearly rent of 6*d.*, died seized thereof since the last court, and that *G. B.* is the only son and heir of the said *T. B.*, and thereupon proclamation is made for the said *G. B.* to come into court and take up the aforesaid hereditaments and premises (*c*).

(Presentment of the death of a freeholder, and general proclamation.)

At this court the homage also present, that *C. M.*, who held to him and his heirs, freely, of the lord of this manor about — acres of land, situate at —, with the appurtenances, by fealty, suit of court, heriot, relief, and the yearly rent of 4*d.*, died seized thereof since the last court, and thereupon proclamation is made for any person or persons claiming title to the aforesaid freehold land, with their appurtenances, by descent, devise or otherwise, to come into court and take up the same (*d*).

(Acknowledgment of tenure by the heir of a freeholder, after proclamation at a former court.)

At this court came *J. L.*, the only son and heir of *B. L.*, whose death was presented at the last court holden for this manor, and acknowledged to hold freely of the lord of this manor a messuage or tenement and about — acres of land, situate at —, with their appurtenances, by fealty, suit of court, heriot, relief, and the yearly rent of 8*d.*, and whereof the said *B. L.* was seized to him and his heirs at the time of his decease; and the said *J. L.* paid the lord for a relief the sum of — (*e*), and his fealty is respited,

(Presentment of the death of a freeholder, and acknowledgment of tenure by his devisee.)

At this court the homage present, that *M. R.*, who held to him and his heirs, freely, of the lord of this manor a certain messuage situate at —, with the appurtenances, by fealty, suit of court, heriot, relief, and the yearly rent of 3*d.*, died seized thereof since the last court, whereupon a heriot accrued to the lord of this manor; and afterwards at this court came *F. N.*, and produced to the homage the last will and testament of the said *M. R.*, bearing date &c., whereby he devised the aforesaid estate unto the said

(*c*) It will be better, though not absolutely necessary, the author thinks, that at least fifteen days' notice of the next court, when fixed, should be served by the bailiff on *G. B.*, informing him that if he neglects to attend it and acknowledge tenancy to the lord, he will be distrained for fealty. See the warrant, post, "Forms of Warrants, &c."

(*d*) The bailiff, as soon after the court as he conveniently can, should ascertain whether the person in possession of the estate is entitled as heir or devisee, and fifteen days at least before the next court

is held, it will be better (though not absolutely necessary the author thinks) that notice of it should be served by the bailiff on such heir or devisee, informing him that if he neglects to attend the court and acknowledge tenancy to the lord, he will be distrained for fealty. Post, "Forms of Warrants, &c."

(*e*) Usually 1*s.* A relief, except when due by reservation or custom, is only payable by the heir of a deceased tenant, by way of fine for taking up the estate. Ante, pt. 1, p. 368; pt. 3, p. 618 et seq.

F. N. and his heirs for ever; and thereupon the said *F. N.* acknowledged himself to be the lord's tenant of the aforesaid messuage with the appurtenances, by and under the services aforesaid, and his fealty is respited.

(Presentment of sale by a freeholder, and acknowledgment of tenure by the purchaser.)

At this court the homage present, that *B. M.*, since the last court, sold to *G. D.* certain closes, containing about — acres, situate at —, and holden freely by him the said *B. M.* of the lord of this manor by fealty, suit of court, heriot, relief, and the yearly rent of 5*d.* (*f*), and afterwards at this court came the said *G. D.*, and acknowledged himself to be the lord's tenant of the aforesaid closes with their appurtenances, and his fealty is respited (*g*).

(Presentment of sale by a freeholder, and proclamation for the purchaser to take up the estate.)

At this court the homage present, that *N. P.*, since the last court, sold to *R. S.* a messuage and several closes, containing about — acres, situate at —, and holden freely by him the said *N. P.* of the lord of this manor, by fealty, suit of court, heriot, relief, and the yearly rent of —*d.*; and thereupon proclamation is made for the said *R. S.* to come into court and take up the aforesaid hereditaments and premises, but he came not (*h*).

(Presentment of advantages accrued to the lord by escheat, &c.)

At this court the homage present, that *A. B.*, late of — yeoman deceased, who held to him and his heirs, freely, of the lord of this manor certain lands and hereditaments, situate &c., formerly in the occupation of —, and now and for some time past in the occupation of —, with the appurtenances thereof, by fealty, suit of court, and the yearly rent of 15*s.*, and who was born illegitimate, died seized thereof since the last court held for this manor, without leaving any heir at law; and thereupon proclamation is made for any person or persons claiming title to the aforesaid freehold lands and hereditaments by or under any conveyance or testamentary disposition made by the said *A. B.* to come into court and take up the same, but no one comes, therefore let a second proclamation be made at the next court baron to be holden for this manor (*i*).

(*f*) In some manors the lord is entitled to a heriot on alienation, ante, pt. 1, pp. 375 et seq., 386; and when that is the case, the advantage thus accruing to the lord should be stated in the presentment.

(*g*) Sometimes also a relief is payable on alienation, but that is relief custom. Ante, pt. 3, p. 621, n. (*d*).

(*h*) It will be better for the bailiff to serve the purchaser with notice to attend the next court, as suggested ante, p. 1150,

in the case of a devisee.

(*i*) The second and third proclamation should be made at the two succeeding courts baron, and if no person establishes a claim to the estate under any disposition by *A. B.*, by will or otherwise, a precept of seizure should be awarded at the third court to the bailiff of the manor, in analogy to the practice in copyhold cases. Ante, App. 747, 782, 788, 829.

And with reference to the rule that

At this court the homage present (*k*), that *A. B.*, who held to him and his heirs (*l*), freely, of the lord of this manor a certain close situate &c., containing &c., and called Black-acre, with the appurtenances thereof, by fealty, suit of court, and the yearly rent of 10s., was at the last Lent assizes held for the county of — convicted of felony, and adjudged to be hanged, but was afterwards allowed the benefit of a conditional pardon of the royal mercy, and ordered to be transported to —, or some one or other of the islands adjacent thereunto, for the term of his natural life:—By virtue of which said attainder the said freehold land and hereditaments have become forfeited to the lord of this manor (*m*).

The homage also present, that on the — day of — instant a black colt strayed into this lordship, and that it is now in the possession of *A. B.* [Here may follow the presentment of any goods waved, and of any deodands, &c.]

(*Presentment of encroachments, &c.*)

At this court the homage present, that *A. B.*, since the last court, hath dug up and inclosed part of the waste grounds of the lord of this manor, situate at —.

And they also present that *C. D.* hath encroached upon the rights of the

there should be distinct writs of escheat for lands held by distinct services, ante, pt. 3, p. 637, the proclamations, if *A. B.* died seized of lands held by distinct rents and services, should be framed so as to show the distinct tenures.

(*k*) But as to the necessity of any presentment of such an act of forfeiture, see ante, pt. 1, p. 450 et seq.

(*l*) N. B. By the 54 Geo. 4, c. 145, corruption of blood is taken away except in treason and murder. Ante, pt. 3, p. 631, n. (*l*).

(*m*) The following form of precept would be proper on such an occasion :

The Manor of, &c. :—To *W. Y.* bailiff of the said manor.

Whereas at a court baron of *A. Z.*, lord of the said manor, held for the same manor this — day of —, in the year 18—, it was presented by the homage that a certain close situate &c., containing &c., and called Black-acre, with the appurtenances thereof, held by *A. B.* to him and his heirs, freely, of the lord of the said manor, by fealty, suit of court, and the

yearly rent of 10s., had become forfeited to the lord of the said manor by the attainder of the said *A. B.* for a capital felony : these are therefore to command and require you the said *W. Y.* forthwith to enter into and upon the aforesaid freehold close and hereditaments, or some part thereof in the name of the whole, and seize the same into the hands of the lord of the said manor ; and that you make return of this precept at the next court baron to be holden for the said manor. Given under my hand and seal the said — day of —, in the year 18—.

J. S. (L. S.)

Steward of the said manor.

(The bailiff's return to be indorsed on the above precept.)

By virtue of the within written precept to me directed, I have seized the within described freehold close and hereditaments into the hands of the lord of the within-mentioned manor, as by the same precept I was commanded.

W. Y. Bailiff.

— —, 18—.

lord of this manor, by ~~inclosing~~ a certain part of the waste lands adjoining the estate of *S. R.*, in the occupation of *E. G.* (*n*)

At this court the homage present that *T. W.* hath, since the last court, broken up and ~~inclosed~~ part of the commonable lands of this manor, contrary to the tenor of the order or by-law made at the last court, and hath thereby incurred the penalty thereof (*o*).

At this court the homage present that *S. L.* hath, since the last court, dug and carried away the turf of part of the commonable lands of this manor, contrary to the tenor of an order or by-law made at a court held the — day of —, and confirmed at the last court, and hath thereby incurred the penalty of such order or by-law.

(*By-laws and orders.*)

At this court (pursuant to an immemorial custom in this behalf) the following orders or by-laws are made by the homage.

IT IS ORDERED, that the Hayward shall impound any cattle, horses, asses, sheep or pigs, which the proprietors or occupiers of ~~inclosed~~ grounds, adjoining the roads or lanes within this manor, shall suffer to go beyond their respective boundaries in such roads or lanes, and that the following sums shall be paid to the Hayward by way of Pinlock, on the release of

These amercements are affeered (q) at 5s. for each horse or cow, 1s. for each ass or pig, and 4d. for each sheep, by us,

Affeerors { *G. H.*
I. K. } Sworn.

such cattle and other animals, namely, 6*d.* for each horse or cow, 3*d.* for each ass or pig, and 2*d.* for each sheep, and the homage amerce every person refusing or neglecting to make such payments in the after-mentioned sums, viz., the sum of 7*s.* for each horse or cow, 1*s.* 6*d.* for each ass or pig, and 6*d.* for each sheep (*p*).

IT IS ORDERED that there shall be a clover hitching sown in — furlong from — to — in the ensuing spring, by the respective occupiers of land in the open fields of this manor, in proportion to the acreage of the lands they so occupy, and that such clover hitching shall be mounded off by Old St. Andrew's day next ensuing; and also that a vetch hitching shall be sown in the ensuing spring in — furlong, by the respective

(*n*) These acts, which create a private injury only to the lord, are not the subject of amercement, though they ought to be presented for the lord's information. Ante, pt. 3, p. 623.

(*o*) No further affeement can be made of this penalty. Indeed, no affeement of a penalty under a by-law is necessary, unless the sum be discretionary. Ante,

pt. 3, pp. 623, 626.

(*p*) The above order is framed on the supposition that an inclosure award has entitled the proprietors of land to the herbage of the roads and lanes within the manor.

(*q*) Unless the custom establishes the penalty, it is proper to affeer it. Ante, pt. 3, p. 623; note (*o*), supra.

occupiers of open field lands within this manor, in proportion to the acreage of the lands they so occupy, and that such vetches shall be mounded off by the 25th day of March —. And the homage amerce every person guilty of breach of these orders in the sum of 30s. for each offence.

This amercement is affeered at 25s., by us,
 Affeers { *L. M.* } Sworn.
 { *N. O.* }

IT IS ORDERED, that if any occupier of lands within this manor shall turn more than two horses upon the commons in respect of each yardland he shall so occupy, he shall pay to the fieldsman the sum of 10s. for each horse exceeding the above stated number, and the homage amerce every person guilty of a breach of this order in the sum of 25s. for every offence.

This amercement is affeered at 20s., by us,
 Affeers { *R. S.* } Sworn.
 { *T. W.* }

At this court the homage ratify and confirm all orders and by-laws made or confirmed at the last court, and not revoked or altered at this court.

(Proceedings in court baron by complaints of debt, detinue, &c.)

The bailiff is to make further proclamation, thus:—"If any persons will enter any complaints at this court, let them come forth and they shall be heard."

Should any persons appear, the steward will enter their complaints after the following manner, leaving a sufficient space to insert appearances, defaults, &c.

A. B. complains of *C. D.* of a plea of debt, 39s. 11d.

E. F. complains of *G. H.* of a plea of trespass on the case to his damage of 38s. 10d.

G. H. complains of *I. K.* of a plea of detinue of goods and chattels, to the value of 28s. (*r*)

Then call the plaintiff three times, thus:

"*A. B.* appear, or you lose your complaint."

If the plaintiff appear by his attorney, enter the warrant of attorney, viz., place the name of the attorney over the name of the plaintiff.

Then call the defendant three times, thus:

"*C. D.* appear and answer to *A. B.* in an action of debt [*or* trespass, &c.]" and if the defendant has been summoned, and his goods attached

(*r*) See as to what actions do and do not lie in court baron, ante, pt. 3, pp. 601, 602.

for neglect, add, "or you forfeit your goods distrained (*s*), and further process will be awarded against you."

If the defendant appear, enter such appearance after the plaint, viz., *C. D.* appears.

NOTE.—The plaintiff hath time to declare until the next court day after the defendant's appearance, and the defendant may imparl until the court day following, when he is to plead (*t*).

If, after the first process of summons is executed, the defendant appear, and the next court day after give a rule to declare, and the plaintiff do not file his declaration within the time, then upon such default the plaintiff is nonsuited, and the defendant may have his costs to be taxed by the steward, for which taxing there is nothing due to the steward, but he receives 2*s.* for entering the judgment, and 2*s.* more for the execution (*u*).

If the action is not brought to issue the plaintiff must enter a continuance, so as to continue the suit from court day to court day, or the defendant may take advantage of it (*x*).

And the court may give a further day to the plaintiff to declare, or to the defendant to plead, which is usually till the next court day, or fourteen days beyond.

When the defendant has pleaded, if the plaintiff join issue thereupon, they may proceed to trial the next court day, should they not proceed further by replication, rejoinder, sur-rejoinder, rebutter, sur-rebutter.

If the parties be at issue, the steward will send out a *venire facias* to the bailiff to summon a jury (*y*).

(*s*) Ante, pt. 3, p. 627. The author has there shown that the defendant's appearance is to be compelled by distress infinite; and that sometimes by custom a *venditioni exponas* is awarded, after the third attachment for sale of goods distrained on non-appearance.

(*t*) It might be considered quite a waste of time to enter fully into the rules of pleading in a work of this nature, especially as in every case of difficulty the practitioner would feel it to be his duty to consult the able treatises of Wentworth, Tidd, Lawes, Stephen, Chitty, and other eminent special pleaders. The author proposes therefore only to offer a few ordinary precedents of declarations, &c., in a suit in the court baron.

[Vide the rules of court on practice and pleading to Hil. Vac. 2 Vict.]

(*u*) Scroggs, pp. 204, 205, who says, "In every case where the plaintiff may

have costs against the defendant, there if the plaintiff be nonsuit, or a verdict pass against him, the defendant shall have his costs, as in debt, trespass, covenant by specialty or upon contract, actions upon the case or upon the statute for personal wrongs. But executors or administrators shall not pay costs, either upon nonsuit or verdict, because their actions are not founded upon debts or contracts made to themselves: but if they bring actions for things done to themselves, as for taking away of goods from them, &c., and they be nonsuit, or verdict be against them, in such case they shall pay costs."

(*x*) Vide the new rules of court on practice and pleading as above.

(*y*) But the trial by jury in matters of a personal nature requires the consent of the parties, or a prescription. Ante, pt. 3, p. 627.

When the panel is returned, enter on the head thereof thus :

Jurors between *A. B.* plaintiff and *C. D.* defendant, in a plea of debt [*or trespass, &c.*]

And when the jury attend at the bar, bid the bailiff make proclamation thus :

“ You good men who are here impanelled to try the issue between *A. B.* plaintiff and *C. D.* defendant, answer to your names, every man as he is called, upon the pain and peril that shall fall thereon (*z*).”

If twelve appear, then swear them one by one in this manner :

“ You shall well and truly try the issue joined between the parties [*or between A. B. plaintiff and C. D. defendant*], and a true verdict give according to the evidence: *So help you God.*” And enter by every man’s name, as he is sworn, *sw.*; and being all sworn, bid them stand together and hear the evidence.

Then call the witnesses, and as they appear to give evidence, administer the following oath :

“ The evidence you shall give to this inquest touching the matter in variance shall be the truth, the whole truth, and nothing but the truth: *So help you God.*”

After all the evidence is given, let the jury withdraw to agree upon their verdict; and when they return into court, the bailiff is to call them over, every man answering to his name.

The steward will then ask if they are agreed on their verdict, to which they reply by their foreman “ Yes.”

Then call the plaintiff three times, thus :

“ *A. B.* appear, or you lose your plaint.”

And upon the plaintiff’s appearance, say to the jury,

“ Do you find for the plaintiff, and in what damages, or for the defendant ?”

Suppose the jury to reply, “ For the plaintiff, damages 30*s.*,” then say, “ Harken to your verdict: You find for the plaintiff, and assess damages 30*s.*, and costs of suit 12*d.*; and so you say all.”

(*z*) Challenges are allowed to the jurors, as in the courts at Westminster. See Scroggs, p. 242; Kitch. p. 178.

The jury reply "Yes." Then bid the plaintiff pay the jury, and so enter the verdict.

[NOTE.—If the verdict find matter incertainly, it is insufficient, and no judgment ought to be given thereupon, as if an executor pleads *plene administravit*, and issue is joined thereupon; and the jury find that the defendant hath goods in his hands to be administered, but do not find of what value.

So a verdict that finds part of the issue, and finds nothing for the residue, is insufficient for the whole, because they have not tried the whole issue wherewith they stood charged; but if the jury give a verdict of the whole issue, and of more, that which is more is surplusage only, and shall not stay judgment].

The whole business of the court being concluded, command the bailiff to make proclamation thereof (see *ante*, p. 1147). [Or, in case a day is already fixed on for the succeeding court, let him say,]

"Oyez, Oyez, Oyez.

"All manner of persons who have more to do at this court, come forth, and you shall be heard; otherwise all persons may depart hence, keeping their hour here, viz. — of the clock of the forenoon, on the — day of — next."

N. B.—After the court is ended, the defendant being condemned by verdict, and judgment entered as aforesaid, a *fiery facias* shall be awarded to levy the debt, costs and damages on the defendant's goods, which are to be taken by virtue thereof, and may be appraised and sold (*a*) to satisfy the plaintiff. And if the defendant hath not any goods whereupon levy may be made, the plaintiff is without remedy in this court, it being no court of record, and no *capias* lying therein (*b*); but the plaintiff might bring an action of debt at common law, and declare upon the judgment recovered in the court baron.

(*a*) Scroggs, p. 200. But it would seem to be by custom only that the goods could be sold; see the authorities, *ante*, pt. 3, p. 628.

(*b*) *Ante*, pt. 3, pp. 601, 628.

FORMS OF PRECEPTS AND PROCESSES IN THE COURT BARON.

(Warrant of attorney to appear.)

I, *C. D.*, do hereby desire and authorize you to appear for me in the court baron of *A. Z.* esquire, lord of the manor of — in the county of —, on — the — day of —, in an action of debt for, &c., [or detinue, &c.,] at the suit of *A. B.*: And for your so doing this shall be your sufficient warrant. In witness, &c.

(Condition of bond for the defendant's appearance.)

The condition, &c. is, that if the above-bounden *C. D.* do appear at the next court, to be holden at, &c., to answer to *A. B.* in an action of debt, &c., and do also stand to such order as the court in that behalf shall adjudge according to law, then this present obligation to be void, &c.

(Summons to appear.)

Manor of —, *J. S.* steward, to *W. Y.*, bailiff of the aforesaid manor, greeting: I command you to summon *C. D.*, so that he be at the next court to be held at — on — the — day of — next, to answer *A. B.* of a plea of debt, [or of detinue, &c.;] and this, &c. Dated, &c.

(Distringas.)

The manor of, &c., *J. S.* steward, to *W. Y.*, bailiff of, &c.

Because *A. B.* complains against *C. D.* of a plea of debt, [or of detinue, &c.,] and has found pledges to prosecute, &c., I command you to distrain the said *C. D.*, by all his goods and chattels, to answer to the said *A. B.* in the plea aforesaid, at the next court there to be held, on the — day of —, and have you there this precept, and in what manner, &c. Dated, &c.

(Second [or third] distringas.)

The manor of, &c., *J. S.* steward, to *W. Y.* bailiff of, &c.

I command you to bring to the next court to be held in and for the said manor on the — day of —, all the goods and chattels of *C. D.*, which you distrained by virtue of the precept to you in that behalf heretofore directed at the suit of *A. B.*, in a plea of debt, [or of detinue, &c.]; and that you further distrain the aforesaid *C. D.* by other his goods and chattels, so that he be at the said court, to be held, &c., to answer the aforesaid *A. B.* in his aforesaid plea of debt, [or detinue, &c.]; and have there this precept. Dated, &c.

(Supersedeas to a distringas on appearance.)

The manor of —, J. S. steward, to W. Y. bailiff of, &c.

Whereas I lately commanded you to distrain *C. D.* by all his goods and chattels, so that he should be at this court, to be held, &c., to answer *A. B.* in a plea of debt of 39s.; Now because the said *C. D.* hath appeared by *G. H.* his attorney to answer the said *A. B.*, I do therefore command you that you altogether forbear executing the said precept; and if you have taken or distrained any of the goods and chattels of the aforesaid *C. D.*, then without delay that you cause the same to be re-delivered to the said *C. D.* Dated, &c.

(Replevin bond.)

The manor of —, J. S. steward, to W. Y. bailiff of, &c.

Forasmuch as *C. D.* hath found me sufficient security, as well for prosecuting his suit, which is for his cattle, to wit, — cows, which *A. B.* took and unjustly detains, as it is alleged, as also to make return, if return be adjudged; therefore in behalf of the lord of the manor aforesaid, I command you to replevy and cause to be re-delivered to the said *C. D.* the cattle aforesaid; and that you summon the said *A. B.*, by good and safe pledges, to be before me at the next court, to be held at — the — day of —, to answer the aforesaid *C. D.* in a plea of taking and unjustly detaining his cattle aforesaid. And the like, &c., to me at the next court certify, or, &c.; this omit not at your peril. Dated, &c.

(Venditioni Exponas.)

The manor of —, J. S. steward, to W. Y. bailiff of, &c.

I command you that you expose to sale one steer by you taken and appraised at —, being the goods and chattels of *C. D.*, which said steer was attached at the suit of *A. B.*, in a plea of debt upon demand of 39s.; and at the court held, &c., the aforesaid *C. D.*, although he was solemnly called, did not appear, by which, according to the custom of this court from time whereof there is no memory of man to the contrary, the said steer is forfeited, &c.; which money have you at the next court, to be held, &c., to satisfy the said *A. B.* his debt aforesaid; and have you there this precept, and in what manner, &c. Dated, &c.

(Sale of goods to plaintiff, founded on the venditioni exponas) (c).

Know all men by these presents, that I, *W. Y.*, bailiff of, &c., by virtue of a precept of *feri facias* from the steward of the court baron of the said manor to me directed, have levied of the goods and chattels of *C. D.* the sum of, &c., being a debt due to *A. B.*, and levied by virtue of the said precept to his use: In full satisfaction of which said sum of — I do, by

virtue of the precept or warrant to me directed as aforesaid, assign, sell and set over to the said *A. B.* all the goods and chattels in the appraisement hereto annexed, valued and nominated at the rate of —: To have and to hold the said goods and chattels to him, his heirs, executors and administrators, as his and their own proper goods, as fully and absolutely as I the said *W. Y.* might, could or ought to do by virtue of the said precept and appraisement, or otherwise howsoever. In witness, &c.

(Declaration.)

*The manor of — { A. B. Plaintiff complains } In a plea of trespass
in the county of — { against C. D. Defendant. } upon the case 39s. (d).*

And whereupon the said *A. B.*, by *E. F.* his attorney, complains, that whereas the aforesaid *C. D.*, on the — day of —, in the — year of our sovereign lady Victoria, of the united kingdom of Great Britain and Ireland queen, defender of the faith, at — aforesaid, within the jurisdiction of this court, was indebted to the said *A. B.* in the sum of 30s. of lawful money of Great Britain, for so much money of the said *A. B.*, at the special instance and request of the said *C. D.*, by him the said *A. B.* to the aforesaid *C. D.* before that time advanced and lent: And also in other 30s. of like lawful money of Great Britain, for so much money of the said *A. B.*, at the like special instance and request of the said *C. D.* by him the said *A. B.* for the said *C. D.* before that time expended, laid out and paid: And being so thereof indebted the said *C. D.*, in consideration thereof, afterwards, to wit, the same day and year, at — aforesaid, within the jurisdiction of this court as aforesaid, assumed upon himself, and then and there faithfully promised the said *A. B.* to pay him the aforesaid two several sums of money, when he should be thereto afterwards required: and whereas also the aforesaid *C. D.* afterwards, to wit, the same — day of —, in the — year &c. aforesaid, in — aforesaid, within the jurisdiction aforesaid, was indebted to the aforesaid *A. B.* in other 30s. of like lawful money of Great Britain, for so much money of the said *A. B.*, by the aforesaid *C. D.* for the use of the said *A. B.* before that time had and received: and being so thereof indebted the aforesaid *C. D.* afterwards, to wit, the same — day of —, in the — year aforesaid, at — aforesaid, in the jurisdiction aforesaid, in consideration aforesaid, assumed upon himself, and then and there faithfully promised that he the said *C. D.* would well and truly pay and satisfy unto him the said *A. B.* the aforesaid sum of money last mentioned, when he should be thereto afterwards requested: And whereas also &c., [here you may lay other counts, proceeding as in the former]: Yet the aforesaid *C. D.*, not at all regarding his several promises and assumptions aforesaid, but contriving and fraudulently intending the said *A. B.* in this behalf craftily and subtilly to deceive and defraud, the aforesaid several sums of money or one penny thereof to the said *A. B.* hath not paid, or anywise for the same contented, although the aforesaid *C. D.* afterwards, to wit, the

(d) See various forms of Declaration in Scroggs, 258 et seq.

same day and year last above said, at — aforesaid, in the jurisdiction aforesaid, was required so to do, but hath hitherto altogether refused, and still doth refuse to pay or anywise content him the said *A. B.* for the same; whereupon the said *A. B.* saith he is worse, and hath damage to the value of 39s., and whereof he brings his suit &c.

Pledges to prosecute, { John Doe,
Richard Roe.

(*General issue.*)

The manor of — }
in the county of — } In a plea of trespass upon the case.

C. D. } And the said *C. D.*, by *G. H.* his attorney, comes and defends
ats. } the wrong and injury, when &c., and says that he is not guilty of
A. B. } the said supposed grievances above laid to his charge, in manner
and form as the said *A. B.* hath above thereof complained
against him: And of this he the said *C. D.* puts himself upon
the country.

In debt.—And the said *C. D.*, by *G. H.* his attorney, comes and defends the wrong and injury, when &c., and saith that he the said *C. D.* did not undertake or promise in manner and form as the said *A. B.* hath above thereof complained against him, and of this he puts himself upon the country, &c.

In detinue.—And the said *C. D.*, by *G. H.* his attorney, comes and defends the wrong and injury, when &c., and saith that he doth not detain the said goods and chattels in the said declaration specified, or any part thereof, in manner and form as the said *A. B.* hath above thereof complained against him; and of this he the said *C. D.* puts himself upon the country, &c.

(*Plea in bar to a declaration.*)

The manor of — }
in the county of — }

C. D.
ats.
A. B.

And the said *C. D.*, by *G. H.* his attorney, comes and defends the force, injury and damages, and whatever else he ought to defend, when and where the court will take the same into consideration; and saith that the said *A. B.* ought not to maintain his said action thereon against him, because he saith that the said declaration, and the subject-matter therein contained, are insufficient in law for him the said *A. B.* to maintain his said action against the said *C. D.*, to which said declaration the said *C. D.* is under no necessity, or in anywise bound by the law of the land to answer; and that he is ready to verify: whereupon, for want of a sufficient declaration in this case, the said *C. D.* prays judgment of the said declaration, and that the said *A. B.* may be precluded from having his said action thereon against him, &c.

(Demurrer to plea in bar.)

And the said *A. B.* saith, that (notwithstanding any thing above alleged by the said *C. D.* in his plea) he the said *A. B.* ought not to be precluded from having his said action thereon against the aforesaid *C. D.*, because he saith that the said plea, in such manner and form as the same is pleaded by the said *C. D.*, and the subject-matter therein contained, are insufficient in law to preclude him the said *A. B.* from having his said action against the said *C. D.*, to which said plea the said *A. B.* is under no necessity, nor in anywise bound by the law of the land to answer, and this he is ready to verify: wherefore by the defect of a sufficient plea in this case, he the said *A. B.* prays judgment, and that his damages occasioned by the premises may be awarded to him, &c.

(Replication.)

And the said *A. B.* saith that he ought not to be precluded from his said action against the said *C. D.*, because he saith that the said *C. D.* hath not paid to the said *A. B.* the sum of 39s. in full satisfaction and discharge of all the several sums of money due from the said *C. D.* to the said *A. B.*, in such manner and form as the said *C. D.* hath above alleged in his plea; and this he prays may be enquired of by the country; and the said *C. D.* prays likewise the same (*e*).

(Foreign plea.)

And the said *C.* in his proper person comes and says that this court ought not to have further cognizance of the plea aforesaid, because he says the cause of action (if any accrued to the said *A.*) accrued to him the said *A.* out of the jurisdiction of this court, to wit, at *T.* in the county of *N.*, and not at — in the said declaration named, or elsewhere within the jurisdiction of this court; and this the said *C.* is ready to verify: wherefore he prays judgment, if this court can or will have further cognizance of this plea, &c. [1 Wentw. 51.]

(Venire facias.)

The manor of — } *J. S.* steward to *W. Y.* bailiff of the said manor,
in the county of — } greeting:

I command you that you cause to come twelve good and lawful men of your bailiwick, that they be and appear at the next court to be held for the manor aforesaid at &c., on &c., at — o'clock of the forenoon, to try such matters between parties and parties as shall then and there be put in issue [or to try the issue joined between *A. B.* plaintiff and *C. D.* defendant of a plea of debt &c.]; and this omit not at your peril. Dated &c.

(Subpœna for witnesses.)

The manor of &c.—*J. S.* steward to &c., [name the witnesses] greeting:

I command you and every of you, that (laying aside all manner of ex-

(*e*) See further as to pleadings in suits in court baron, Scroggs, 281 et seq.

cuses and delays whatsoever) you be in your proper persons at the next court to be held at &c., on &c., to testify and declare the truth in a certain suit depending in the aforesaid court between *A. B.* plaintiff and *C. D.* defendant, in a plea of debt [*or detinue &c.*]; and herein fail not at your peril. Dated &c.

(*Levari facias.*)

The manor of, &c.—*J. S.* steward to *W. Y.* bailiff of &c.

Because *A. B.* hath recovered against *C. D.* 30s. in a plea of debt [*or detinue &c.*], and 15s. for his costs and charges, of which the aforesaid *C. D.* is convicted by judgment of the said court, I command you to levy according to custom the aforesaid 30s. adjudged to the said *A. B.* in the said court, and the said 15s. for his costs; and have you that money at the next court there to be held on the — day of —, to render to the said *A. B.* for his aforesaid damages, and have there this precept, and in what manner &c. Dated &c.

(*Fieri facias in debt.*)

The manor of, &c.—*J. S.* steward to *W. Y.* bailiff of &c.

I command you that of the *goods* and *chattels* of *C. D.*, you cause to be made as well a certain debt of 30s. which *A. B.* has recovered in the said court against him, as 13s. 4d. which were adjudged to the said *A. B.* in the same court for his costs and charges by him about his suit in that behalf expended; and have the money at the next court to be held on — the — day of —, to render to the said *A. B.* for the debt and damages aforesaid, whereof the said *C. D.* is convicted; and this &c. Dated &c.

(*Fieri facias in case.*)

That of the goods &c., which in the said court, before the suitors of the same court, were adjudged to *A. B.* for his damages, which he had by occasion of a certain trespass on the case done to the said plaintiff by the said defendant at &c.; and have that money &c.

(*Fieri facias in assumpsit.*)

Which in the said court, before the suitors of the same court, were adjudged to *A. B.* for his damages, which he had by occasion of certain promises and undertakings made to the said plaintiff by the said defendant at &c.; and have that money &c.

(*Fieri facias upon verdict for the defendant.*)

The manor of, &c.—*J. S.* steward to *W. Y.* bailiff of &c.

I command you that of the *goods* and *chattels* of *A. B.*, you cause to be made 32s. which were adjudged to *C. D.* in the said court, before the suitors of the same court, for his damages, according to the form of the statute, which he sustained by occasion that the said *A. B.* unjustly prosecuted a certain plaint in a plea of trespass upon the case against the said *C. D.*, as is lately found by a certain jury of the country; and have that

money at the next court there to be held on the —— day &c., to render to the said *C. D.* for his damages aforesaid, whereof the said *A. B.* is convicted; and this &c.

(Fieri facias upon nonsuit.)

That of the goods and chattels of *A. B.*, you cause to be made sixteen shillings, which were adjudged to *C. D.* in the said court, before the suitors of the same court, according to the form of the statute in that case made and provided, for his damages, for that the said *A. B.* did not prosecute his plaint lately levied in the said court against the said *C. D.* in a plea of trespass on the case; and have that money at the next court, before the suitors of the said court, to be held there on the —— day &c., to satisfy the said *C.* for his costs and charges aforesaid, whereof the said *A.* is convicted; and this &c.

ROLLS OF COURT LEET AND COURT BARON.

The manor of — } The court leet, with view of frank-pledge, and
in the county of — } the court baron of *A. Z.* esquire, lord of the said
 manor, held at — within the said manor on — the — day
 of —, in the — year of the reign of our sovereign lady Victoria,
 by the grace of God of the united kingdom of Great Britain and
 Ireland queen, defender of the faith, and in the year of our Lord
 — [before *J. S.* esquire, steward] (*a*).

A. B. } The jury for our sovereign lady { *G. H.*
C. D. } the queen and the lord of this { *I. K.*
E. F. } leet. { *L. M.*
 &c. } &c.

R. W. } Free suitors { *J. C.*
W. C. } { *R. A.*

Who being sworn and charged upon their oaths touching articles of the court leet as well as the court baron (*b*), present and say as follows :

(*Presentment of absent residents.*)

The jury present that *W. C.*, *C. B.*, *W. K.*, *R. S.*, and *M. E.* are residents with the precinct of this leet, and owe
This amercement is affeered at suit at this court, but have respectively
the sum of 3d. for each default, made default, and are severally amerced by
by us, the jury in the sum of 6d.

Affeoors { *A. B.* } Sworn.
 { *C. D.* }

(*Presentment of officers.*)

The jury also present *E. S.* and *J. B.* to be constables for —, who being present at this court are sworn to perform the duties of their said office.

(*a*) We have seen that a court baron may, by prescription, be held before the steward, and as that custom prevails in most manors where a leet jurisdiction is appended, the author has chosen this form: But when no such custom exists, it would

be better to omit the words between brackets, and to substitute the following entry :—

Present at this court.

J. S. steward. W. Y. bailiff.

(*b*) See the charge, ante, 1141.

The jury also present *J. W.* to be third-borough for — aforesaid, who being also present is sworn to perform the duties of that office.

The jury also present *R. B.* to be head-borough for —, who being also present at this court is sworn to perform the duties of that office.

The jury also present *C. D.* to be tithing-man for the hamlet of —, who also being present is sworn to perform the duties of that office.

The jury also present *W. T.* and *R. C.* to be aleconners within the jurisdiction of this leet, who being present are sworn to the due execution of their said office.

The jury also present *T. R.* and *C. J.* to be leather-sealers within the jurisdiction of this leet, who being present are sworn to the due execution of their office.

The jury also present *B. G.* and *C. W.* to be street-drivers within the jurisdiction of this leet, who being present are sworn to the due execution of their office.

(Presentment of nuisances, &c.)

The jury present *J. B.* for an enroachment made by placing a fence in
This amercement is affeered a certain lane called —, within the ju-
at the sum of £5 by us, risdiction of this leet, to the common
 nuisance of all the king's liege subjects,
 and amerce him in the sum of £5.
 Affeers { *A. B.* } Sworn. (c)
 { *C. D.* }

The jury present that *E. M.* hath diverted a certain ancient watercourse, running from — to —, and amerce him in the sum of 40s.

The jury also present that *J. W.* hath obstructed the free passage of the street called — within the jurisdiction of this leet, and amerce him in the sum of 20s.

The jury also present that *A. B.* hath neglected the repairs of a certain footpath leading from — to the church of —, and amerce him in the sum of 10s.

The jury also present *W. L.* for stopping a certain common sewer or watercourse leading from — to —, and amerce him in the sum of 10s.

The jury also present *B. M.* and *S. H.* for resisting the execution of

(c) This will serve to show the manner of affeering the several other amercements.

the duties of *S. K.* and *L. M.* the aleconners appointed at the last court held for this manor, and amerce them each in the sum of 5s.

The jury also present that *J. B.*, who was elected constable at the last court held for this manor, is not here at this court to present that which to his office belongs :—Therefore they amerce the said *J. B.* in the sum of 5s.

The jury also present that *G. L.*, who was elected aleconner at the last court held for this manor, is not here at this court to present that which to his office belongs :—Therefore they amerce the said *G. L.* in the sum of 3s.

(*Presentment of felonies, &c.*)

Petty Treason (as felony) (d).—The jury also present that *W. T.* of, &c., at —, within the jurisdiction of this court, coined and fabricated twenty pieces of gold money called sovereigns, and twenty pieces of silver money called shillings, falsely and feloniously, (the king's letters patent not being previously obtained,) against the peace of our sovereign lord the king, his crown and dignity, and against the form of the statute in that case made and provided. [Kitch. 98.]

Burglary.—The jury also present that *P. B.* of, &c., labourer, on the — day of —, at *L.*, within the jurisdiction of this court, about the hour of — in the night of the same day, feloniously broke and entered the dwelling-house of one, &c., with the attempt to rob the aforesaid —; and six silver spoons of the goods and chattels of the aforesaid —, of the value of —, then and there being, feloniously took and carried away, against the peace of our lord the king, his crown and dignity. [Kitch. 98, 99.]

Highway Robbery.—The jury also present that *J. D.* of, &c., labourer, on the — day of —, at *S.*, within the jurisdiction of this court, with force and arms, and against the peace, &c., in the king's highway there made assault upon *G. M.*, and him the aforesaid *G. M.* then and there robbed, and 16s. of the goods and chattels of the aforesaid *G. M.* from the person of him the said *G. M.* feloniously took and carried away, against the peace, &c. [Kitch. 99.]

Hue and Cry.—The jury also present that the aforesaid *G. M.* being so robbed raised hue and cry, and the said *J. D.* as a felon, on the same day and year, from the place where he was so robbed, did freshly pursue to the town of, &c., and that none of the inhabitants there, upon the hue and cry aforesaid, the said *J. D.* did follow, and so the aforesaid felon escaped, in contempt of our sovereign lord the king, and contrary to the form of the

statute in such case made and provided; and therefore the said town of &c., in mercy &c.

Rape (e).—The jury also present that *D. L.* of &c., yeoman, on the — day of &c., at —, within the jurisdiction of this court, the close and house of &c., broke and entered, and upon one *M.* &c., the daughter &c., being in the peace of God and of our sovereign Lord the King, made an assault, and then and there against her will did ravish her the said *M.*, and did carnally know her, against the peace, &c. [Kitch. 93.]

Arson.—The jury also present that one *T. B.* of &c., yeoman, on the — day of &c., at *I.*, within the jurisdiction of this court, with force and arms &c., wilfully and feloniously (of his malice aforethought) did burn and with fire destroy the dwelling house of one *C.*, against the peace, &c.; therefore the bailiff of this manor is commanded to seize all the lands and tenements, goods and chattels of the said *T. B.*, that he may answer for the same to the lord of this manor. [Kitch. 98.]

Larceny.—The jury also present that *P. J.* of &c., on the — day of &c., the close of one &c., at — aforesaid broke and entered, and one table cloth of the value of 9*d.* of the goods and chattels of the aforesaid &c., then and there found, feloniously took and carried away; therefore the bailiff of this manor is commanded to seize all the goods and chattels of the said *P. J.* into the hands of the lord of this manor. [Kitch. 100.]

Stealing fish.—The jury also present that one *J. L.* of &c., yeoman, on the — day of &c., at *I.* aforesaid, within the jurisdiction of this court, about the hour of eleven in the night of the same day, a certain trunk of &c., broke and entered, and ten fishes called pike, of the value &c., of the goods and chattels of the aforesaid &c., from and out of his said trunk &c., then and there feloniously took and carried away, contrary to the peace &c.; therefore &c. [Kitch. 100.]

Accessory.—The jury also present that *W. S.* of *I.* aforesaid, yeoman, on the — day &c., at *I.* aforesaid, within the jurisdiction of this court, did counsel, procure, encourage, aid and abet one *L. M.* of &c., feloniously to steal, take and lead away one black cow, of the chattels of &c., of the value &c., then and there found, and by means of which counselling, procuring, encouraging, aiding and abetting the said *L. M.* on the said — day &c., feloniously stole, took and drove away &c. [Kitch. 98.]

Assault with bloodshed.—The jury also present that *T. F.* of &c., labourer, on the — day of &c., at *I.*, within the jurisdiction of this leet, committed an assault with bloodshed on *A. B.* of &c., yeoman.

Rescue.—The jury also present that one *B. R.* of *I.* aforesaid, yeoman,

(e) Ante, pt. 3, p. 739.

was taken and arrested upon suspicion of felony committed within the jurisdiction of this leet, and set in the stocks of this manor, and that one *I. F.* of *I.* aforesaid, labourer, on the — day of &c., at *I.* aforesaid, the aforesaid stocks with force and arms feloniously did break, and the said *B. R.* then and there did suffer to escape and go at large, against the peace &c. ; therefore the bailiff is commanded &c. [Kitch. 100.]

Further rescue.—The jury also present that *T. L.* of &c., yeoman, on the — day &c., at *I.*, within the jurisdiction of this court, one calf of the value &c., of the goods and chattels of one *J. B.* then and there found, feloniously took and carried away ; and that *W. Y.*, bailiff of the aforesaid manor, on the — day &c., at *I.* aforesaid, the aforesaid *T. L.* arrested upon suspicion of the said felony ; and that *W. F.* of *I.* aforesaid, labourer, with force and arms &c., at *I.* aforesaid, on the said day and year, upon the aforesaid *W. Y.*, in the peace of God and our sovereign lord the king being, did make an assault, and the aforesaid *T. L.*, being in the custody of the said *W. Y.*, then and there feloniously took away, rescued and suffered to go at large, contrary to the peace &c. ; therefore the bailiff is commanded &c. [Kitch. 100.]

Common scold.—The jury also present that *C. F.* of the parish of — in the said county, the wife of *D. F.* of the aforesaid parish of —, labourer, is a common scold at the parish aforesaid, in the county aforesaid, within the jurisdiction of this court, as well with her neighbours, as with other the liege people of our lord the king, whereby they are much molested, disquieted and grieved, and against the peace &c.

[Vide Precedent of Roll of Court Baron, ante, 1149, and Charge to the Homage, ante, 1143].

And note, that when a court leet and court baron are held together, the presentments as to the business of the latter should, (after the entries of presentments as to the business of the former,) begin as in the above mentioned precedent of roll of court baron, viz. :—

“ At this court the *homage* present that &c.”

And should conclude thus :—

“ The *jury* and *homage* ratify and confirm all orders and by-laws made or confirmed at the last court, and not revoked or altered at this court, agreeing that the steward may alter matters of form in these presentments, not altering matters of substance.”

FORMS OF WARRANTS, &c., IN CONNECTION WITH
THE COURT BARON (a).

(Warrant to distrain for amercements.)

The manor of — } To W. Y. bailiff of the said manor, greeting :—
in the county of — }

ESTREAT of amercements at a court baron of A. Z. esquire, lord of
the said manor, held in and for the said manor this — day of
— &c.

A. B., a freehold tenant, for neglecting to appear at the said court, there
to perform his suit and service, being duly summoned to attend, affeered
at (b) 5s.

C. D., a freehold tenant, for a breach of a by-law made at a court holden
for the said manor on the — day of —, directing that &c., 20s., affeered
at 15s.

You are hereby commanded to levy, by distress of the goods and chat-
tels of the several above named defaulters, the several sums of money set
opposite to their respective names :—And you are to answer the same when
thereunto required. Given under my hand and seal this — day of —,
18—.

J. S. (L. s.)
Steward of the said manor.

(Warrant to distrain for arrears of quit rents.)

The manor of — } To W. Y., bailiff of the said manor.
in the county of — }

Arrears of quit rents due at — last to A. Z. esquire, lord of the
said manor, from the under named tenant in respect of the under
mentioned freehold estates, viz. :—

Tenant's Name.	Description of Property.	Quit Rents.	Number of Years in Arrear.	Total Amount due.
A. B.	Messuage and } lands called — }	£ s. d. — — —	— — —	£ s. d. — — — (*)
Same	Lands called } — }	— — —	— — —	— — — (†)

(a) See form of precept to seize on forfeiture of freehold lands, ante, p. 1152. lect of suit of court by a freeholder appears to be distress infinite. Ante, pt. 3, p. 616; ante, p. 1144.
(b) But the lord's best remedy for neg-

You are hereby commanded to levy, by distress of the goods and chattels of the above named *A. B.*, the above mentioned respective sums of £— — — (*), and £— — — (†):—And you are to answer the same when thereunto required. Given under my hand and seal this — day of —, 18—.

J. S. (L. s.)

Steward of the said manor.

(Warrant to distrain the heir of a deceased freeholder to perform his fealty (c).)

The manor of — } J. S. steward of the said manor, to W. Y., bailiff.
in the county of — }

Whereas at a court baron of *A. Z.* esquire, lord of the said manor, held in and for the said manor on — the — day of — in the year of our lord —, the homage did present that *A. B.*, who held freely of the lord of the said manor a certain close situate &c., called &c., at the yearly rent of 3s., heriot when it should happen, fealty, suit of court and other services, died since the then last court held for the said manor, whereupon a heriot, to wit, the best living animal of the said *A. B.*, became due to the lord of the said manor; and that on the death of the said *A. B.* the said close descended to *B. B.* of &c., as his only son and heir: And whereas due notice was given by the said *W. Y.*, bailiff of the said manor, that a court baron would be holden this day for the said manor at the usual and accustomed place, being &c., at the hour of ten o'clock in the forenoon, when and where all persons who owed suit and service at the same court were commanded to attend (*d*): And whereas the said *B. B.* did not attend the said court held this day for the aforesaid manor, to take up the said estate which so descended to him as aforesaid, and to do his fealty, and perform his suit and service for and in respect of the same:

You are therefore by me the said steward hereby authorized and commanded of the goods and chattels of the said *B. B.* to distrain him for his default, and to do his fealty for and in respect of the aforesaid close and hereditaments at the next court baron to be holden for the said manor. Given under my hand and seal this — day of —, 18—.

J. S. (L. s.)

(Warrant to distrain a freeholder for neglect of suit of court (e).)

The manor of — } J. S. steward of the said manor, to W. Y. bailiff.
in the county of — }

Whereas at a court baron held for the said manor on — the — day of —, *C. D.* of &c., attended and took up a certain homestead, farm,

(c) Ante, pt. 3, p. 616. This form may easily be made to serve as a warrant to distrain a devisee or a purchaser for neglect of fealty. See notes (*a*) and (*b*) ante, p. 1149, n. (*h*), ante, p. 1151; and next note.

(d) It would be proper, though not absolutely necessary, to serve *B. B.* personally with notice of the court; ante, p. 1150.

(e) Ante, pt. 3, p. 616.

lands and hereditaments called —, held freely of the lord of the said manor by the yearly rent of £1 : 2s. 6d., and then lately sold and conveyed to the said *C. D.* by *E. F.* of &c.; and the said *C. D.* at the said court acknowledged fealty, and performed the suit and service due in respect of the said freehold hereditaments: And whereas due notice was given by the said *W. Y.*, bailiff of the said manor, that a court baron would be holden this day for the said manor at the usual and accustomed place, being &c., at the hour of ten o'clock in the forenoon, when and where all persons who owed suit and service at the same court were commanded to attend (*f*): And whereas the said *C. D.* did not attend the said court held this day for the aforesaid manor, to perform his suit and service for and in respect of the said freehold hereditaments:

You are therefore by me the said steward hereby authorized and commanded of the goods and chattels of the said *C. D.* to distrain him for his default, and to do and perform his suit and service for and in respect of the aforesaid homestead, farm, lands and hereditaments at the next court baron to be holden for the said manor. Given under my hand and seal this — day of —, 18—.

J. S. (L. S.)

(*Consent of the freehold and copyhold tenants to a grant by the lord of part of the waste land over which the tenants have a right of common (g).*)

The manor of — } We do hereby signify our willingness and con-
in the county of — } sent that a grant may be made by the lord of the
said manor to *T. W.* of &c., labourer, of a piece or parcel of land part of
the waste of the same manor called — common, containing about —,
as the same is now staked out, to be held by the said *T. W.* and his heirs
for ever, freely, of the lord of the said manor, at and under the yearly rent
of —s. —d., fealty and suit of court, as other the respective freehold
tenants of the said manor now hold their respective estates; freed and dis-
charged of and from all such commonable rights as are now exercisable
by us over and upon the wastes of the aforesaid manor. Witness our
hands this — day of —, 18—.

Freehold Tenants.

A. B.

C. D.

Copyhold Tenants.

E. F.

G. H.

(*f*) It is here assumed that there had been intermediate courts which *C. D.* neglected to attend.

It would be proper, though not absolutely necessary, to serve *C. D.* personally with notice of the court.

(*g*) If by the custom of the manor such grants may be made with the consent of the homage, (*ante*, pt. 1, pp. 16 et seq.,

518 et seq.,) the entry on the court rolls may be as follows:—

“ At this court the homage testify by their signatures to the minutes of their verdict, their willingness and consent that a grant may &c.” [the entry may be continued in nearly the same language as in this form of a consent given out of court.]

FORMS OF WARRANTS, &c., IN CONNECTION WITH THE COURT LEET.

(Warrant to distrain for amercements.)

*The manor of ——— }
in the county of ——— }* To *W. Y.*, bailiff of the said manor, greeting:

Estreat of amercements at a certain court leet, with view of frank-pledge, and court baron of *A. Z.* esquire, lord of the said manor, held in and for the said manor this ——— day of, &c.

W. C., *C. B.*, *W. K.*, *R. S.* and *M. E.*, severally resiants within the jurisdiction of the said leet, and who neglected to appear at the said court and perform their suit (*h*), amerced in 6*d.* each, (affeered at) 3*d.* each

J. B., constable, who neglected to appear at the said court, and present that which to his office belongs, amerced in 5*s.*, (affeered at) 3*s.*

G. L., aleconner, who neglected to appear at the said court, and present that which to his office belongs, amerced in 3*s.*, (affeered at) 2*s.*

You are hereby commanded to levy, by distress of the goods and chattels of the several above-named defaulters, the several and respective sums of money set opposite to their respective names; and you are to answer the same when thereunto required.

J. S. (L. S.)
Steward of the said manor.

(Order for a constable who did not appear at the court to be sworn into his office by a justice of the peace.)

*The manor of ——— }
in the county of ——— }* To *A. B.*

Forasmuch as at the court leet holden this present day in and for the said manor you are elected constable for the year ensuing: these are therefore to will and require you, upon receipt hereof, to take upon you the said office, and forthwith to repair to one of his majesty's justices of the peace of the said county, before him to take your oath for the due execution of your said office: hereof fail not at your peril. Given under my hand and seal the ——— day of ———.

J. S. steward. (L. S.)

(*h*) Ante, pt. 3, p. 686.

(Warrant to bring an offender against a particular statute before the steward of a court leet.)

The manor of ———
in the county of ———
to wit. } *J. S.*, steward of the court leet of the aforesaid
 manor, to the constables of ———, greeting:

Whereas complaint hath been made to me that *J. W.* hath &c., [set forth the facts] contrary to the statute in this case made and provided: these are therefore in his majesty's name to will and require that you some or one of you do bring the said *T. W.* before me to answer the premises, and further to do and receive as by the said statute in that behalf made is appointed: hereof fail not at your peril. Given under my hand and seal the — day of —.

J. S. steward. (L. s.)

(A mittimus upon the preceding warrant.)

The manor of &c. } *J. S.*, steward &c., to the constables &c., and to
to wit. } every of them, and to the keeper of her majesty's gaol
 for the said county of — at — in the same county.

Forasmuch as it hath been duly proved before me that *T. W.* &c., [set forth the facts] contrary to the statute in that case made and provided: these are therefore in her majesty's name to require that you the aforesaid constables, some or one of you, do convey the said *T. W.* to her majesty's gaol aforesaid, and him there deliver to the keeper of the same with this precept: And that you the said keeper do receive the said *T. W.* into the said gaol, and him there safely keep until he hath paid &c., and shall be thence discharged by due course of law; hereof fail not &c. Given &c.

J. S. steward. (L. s.)

(A precept to bring a scold to be tried at a court leet.)

The manor of ——— } *J. S.*, steward of the court leet of the said manor,
in the county of ——— } to the constables of ———, greeting:

Forasmuch as *C. F.* of the parish of — in the said county, the wife of *D. F.* of the aforesaid parish of —, labourer, was at the court leet of the said manor, holden before me this — day of —, by the oaths of twelve honest and lawful men of the manor aforesaid, presented for her being a common scold at the parish aforesaid in the county aforesaid, within the jurisdiction of the said court, as well with her neighbours as with other the liege people of our lady the queen, whereby they are much molested, disquieted and grieved, and against the peace of her majesty, her crown and dignity: these are therefore to command you to cause the said *C. F.* to appear at the next court leet to be holden in and for the said manor at — aforesaid in the county aforesaid, to answer the premises, and further to do and receive as the same court shall consider of her in that behalf; and have you there this precept. Given under my hand and seal the — day of —, in the — year of the reign &c., and in the year of our Lord —.

J. S. steward. (L. s.)

EXTRACTS

FROM

ACTS OF PARLIAMENT RELATING TO THE JURISDICTION
OF COURTS BARON AND COURTS LEET.

COURTS BARON.

STAT. MARLEBRIDGE (52 H. III. c. 9).

“ Who shall do suit of court : suit of court by coparceners.”

Sect. 1. “ For doing suits unto courts of great lords, or of meaner persons, from henceforth this order shall be observed, that none that is infeoffed by deed from henceforth shall be distrained to do such suit to the court of his lord, without he be specially bound thereto by the form of his deed :— these only except whose ancestors, or they themselves, have used to do such suit before the first voyage of the said King Henry into Britain, sithence which nine and thirty years and an half are passed, unto the time that these statutes were enacted. Likewise from henceforth none that is infeoffed without deed, from the time of the Conquest, or any other ancient feoffment, shall be distrained to do such suits, unless that he or his ancestors used to do it before the said voyage. And they that are infeoffed by deed to do a certain service, as, for service of so many shillings by year, to be acquitted of all service, from henceforth shall not be bounden to such suits, or other like, contrary unto the form of their feoffment. And if any inheritance whereof but one suit is due descend unto many heirs, *as unto parceners*, whoso hath the eldest part of the inheritance shall do that one suit for himself and his fellows, and the other coheirs shall be contributaries, according to their portion, for doing such suit. And if many feoffees be seized of an inheritance whereof but one suit is due, the lord of the fee shall have but that one suit, and shall not exact of the said inheritance but that one suit, as hath been used to be done before. And if those feoffees have no warrant or mean which ought to acquit them, then all the feoffees, according to their portion, shall be contributaries for doing the suit for them. And if it chance that the lords of the fee do distrain their tenants for such suits, contrary to this act, then at the complaint of the tenants the lords shall be attached to appear in the king’s court at a short day, to make answer thereto, and shall have but one essoin therein, if they be within the realm ; and immediately the beasts, or other distresses taken by this occasion, shall be delivered to the plaintiff, and so shall remain, until the plea

betwixt them be determined." [The lord's attendance compellable by further attachment, and in case of further default, then by distress of their goods and chattels.]

13 EDW. I. stat. 2, c. 6.

(*View of arms, &c.*)

"And that view of armor be made every year two times. And in every hundred and franchise two constables shall be chosen to make the view of armor. And the constables aforesaid shall present before justices assigned such defaults as they do see in the country about armor, and of the suits of towns, and of highways, and also shall present all such as do lodge strangers in uplandish towns, for whom they will not answer; and the justices assigned shall present at every parliament unto the king such defaults as they shall find, and the king shall provide remedy therein. And from henceforth let sheriffs take good heed, and bailiffs, within their franchises and without, be they higher or lower, that have any bailiwick or forestry in fee, or otherwise, that they shall follow the cry with the country, and after, as they are bounden, to keep horses and armor, or so to do; and if there be any that do not, the defaults shall be presented by the constables to the justices assigned, and after, by them to the king, and the king will provide a remedy as afore is said. And the king commandeth and forbiddeth, that from henceforth neither fairs nor markets be kept in churchyards, for the honour of the church."

1 & 2 PHILIP & MARY, c. 12.

"*An act for the impounding of distresses.*"

Sect. 1. "For the avoiding of grievous vexations, exactions, troubles and disorder in taking of distresses, and impounding of cattle, be it enacted by the authority of this present parliament, that from and after the first day of April next coming, no distress of cattle shall be driven out of the hundred, rape, wapentake or lathe where such distress is or shall be taken, except that it be to a pound overt within the same shire, not above three miles distant from the place where the said distress is taken: and that no cattle or other goods distrained or taken by way of distress for any manner of cause at one time shall be impounded in several places, whereby the owner or owners of such distress shall be constrained to sue several replevies for the delivery of the said distress so taken at one time; upon pain every person offending contrary to this act shall forfeit to the party grieved, for every such offence, an hundred shillings, and treble damages."

Sect. 2. "And be it further enacted by the authority aforesaid, that after the said first day of April, no person or persons shall take for keeping in pound, impounding or poundage of any manner of distress, above the sum of fourpence for any one whole distress that shall be so impounded; and where less hath been used, there to take less; upon the pain of five pounds, to be paid to the party grieved, over and beside such money as he shall take

above the sum of fourpence; any usage or prescription to the contrary in anywise notwithstanding."

1 [2] JAC. I. c. 5.

"An act to prevent the overcharge of the people by stewards of court leets and court barons."

"Whereas the king's most excellent majesty, the lords spiritual and temporal, and other his highness's subjects of this realm of England and Wales, have in divers places of the same many franchises, jurisdictions, privileges and liberties to keep court leets, or court barons, for the true administration of justice, and to the punishing and suppressing of offences, the profits and perquisites of which courts have heretofore been used to be levied and collected by the bailiff or other minister of such court, and by him accounted for to his highness's progenitors, or other lords or ladies of such courts and manors, and as of right it ought so to be: But now, by reason of the great increase of people, the said profits and perquisites of courts are grown to be of a better yearly value than in ancient time it hath been, divers that are now stewards of such courts have heretofore in their own names, or in the names of some other to their use, obtained and gotten divers grants of all the profits and perquisites of such courts whereof they are stewards, whereby many of his majesty's subjects are unjustly vexed, and by grievous fines and amerciaments unduly punished, greatly to the wronging and impoverishing of the tenants and inhabitants where such stewards are, proceeding out of a greedy desire to make and obtain an undue and extraordinary gain to themselves: It is therefore, by the authority of this present parliament, established and enacted, that no steward, deputy steward, or other under steward of any of the courts aforesaid, shall directly or indirectly, in his own name or in the name of any other, from and after the expiration of one year next after the end of this session of this present parliament, take, receive or make benefit to his own use, in money, goods or any other thing, to the value of twelve pence or more, by virtue or colour of any demise or grant hereafter to be made of any of the profits or perquisites or amerciaments of any such courts whereof they are stewards, which rightfully shall belong to the lords of the same, upon pain that every steward offending contrary to the tenor of this present act of parliament shall for every such his offence forfeit the sum of forty pounds, and to be disabled ever after to be steward of such court, or of any other; the one half of the forfeiture to be to our sovereign lord the king's majesty, his heirs and successors; the other half to any of his majesty's subjects that shall complain in any one of his highness's courts of record, by action of debt, bill, plaint or information, in which suit no essoin, protection, wager of law or other dilatory plea shall be allowed."

[Vide stat. Westm. 1, c. 33, against Maintenance, and Westm. 2, c. 36, ante, pt. 3, p. 627, n.]

6 & 7 WILL. IV. c. 60.

“ An Act to amend the Laws relating to the Customs.”[Vide extract from this act, sect. 7, *ante*, pt. 3, tit. “ WRECK.”]

COURTS LEET.

4 EDW. IV. c. 1 (a).

[The length and breadth of cloths made to be sold. No cloths wrought beyond sea shall be brought into England.]

Sect. 6. That every justice of peace [&c. &c.], and every steward keeping or holding wapentake or leet of any person out of city, borough or town, where no mayor, master, bailiff or bailiffs, or portreeves is or be, shall have power or authority, by this ordinance, to hear and determine the complaints of every such clothmaker and labourer, as well for nonpayment of the said labourer's wages as of the said forfeiture and damages, by due examination of the parties in this behalf; and thereupon for nonpayment of the said duties and forfeitures, and for the said damages, to commit the said offenders in this behalf to the next gaol within the same county, there to remain till the said duties, forfeitures and damages be fully paid to the said labourer or clothmaker; and also that every [of the said justices of peace, &c.,] steward of wapentake and leet, upon information or complaint of any other person which is not grieved in this behalf, shall have power by the said authority within his jurisdiction to cause the party to come before him, against whom such information or complaint shall be made for offending this ordinance, and to examine him in and upon the matter contained in the same information or complaint; and if the party by examination or other due proofs be found guilty or defective, that then the same party, as often and for every time that he is so found guilty or defective, shall forfeit to the king, or to such person or persons who is or be entitled to have fines or amerciements for offences done within their jurisdiction, three shillings and fourpence. And that every of the said justices of peace and other officers aforesaid within his jurisdiction, upon every of the said informations or complaints, shall have full power to make like process against the party upon whom any such information or complaint, as before is rehearsed, shall be made, to make him personally to appear before him, thereupon to be examined, as justices of peace have upon information or complaint made to them for surety of peace, without any fee or reward to be taken or had by any of the said justices, or any other officer, for the execution of their offices in this behalf.]

(a) See the reference to this statute or ordinance, and the thirteen following statutes or ordinances, *ante*, pt. 3, p. 689, n.

14 & 15 HEN. VIII. c. 10.

[The penalty for unlawful hunting the hare.]

Be it enacted &c., that no person from henceforth race, destroy and kill any hare in the snow with any dog, bitch, bow, nor otherwise. And that the justices of peace within every shire of every sessions of the peace, and stewards of leets, shall have full authority and power to inquire of such offenders; and after such inquisitions found, the said justices of peace and stewards of leets, for every hare so killed, shall cess upon every such offender six shillings and eightpence, to be forfeited to the king when found by such justices of the peace, and the forfeiture found in every leet to be to the lord of the leet.]

31 ELIZ. c. 7.

“An act against the erecting and maintaining of cottages.”

Sect. 1. “For the avoiding of the great inconveniences which are found by experience to grow by the erecting and building of great numbers and multitude of cottages, which are daily more and more increased in many parts of this realm; be it enacted by the queen’s most excellent majesty, and the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, That after the end of this session of parliament, no person shall within this realm of England make, build or erect, or cause to be made, builded or erected, any manner of cottage for habitation or dwelling, nor convert or ordain any building or housing made or hereafter to be made, to be used as a cottage for habitation or dwelling, unless the same person do assign and lay to the same cottage or building four acres of ground at the least, to be accounted according to the statute or ordinance de terris mensurandis, being his or her own freehold or inheritance, lying near to the said cottage, to be continually occupied and manured therewith, so long as the same cottage shall be inhabited; upon pain that every such offender shall forfeit to our sovereign lady the queen’s majesty, her heirs and successors, ten pounds of lawful money of England for every such offence.”

Sect. 2. “And be it further enacted by the authority aforesaid, that every person which, after the end of this session of parliament, shall willingly uphold, maintain and continue any such cottage hereafter to be erected, converted or ordained for habitation or dwelling, whereunto four acres of ground as is aforesaid shall not be assigned and laid to be used and occupied with the same, shall forfeit to our said sovereign lady the queen’s majesty, her heirs and successors, forty shillings for every month that any such cottage shall be by him or them upholden, maintained and continued.”

Sect. 3. “And be it further enacted by the authority aforesaid, that all justices of assize and justices of peace, in their open sessions, and every lord within the precinct of his leet, and no others, shall have full power and authority within their several limits and jurisdictions, to inquire of, hear

and determine all offences contrary to this present act, as well by indictment as otherwise by presentment or information, and to award execution for the levying of the several forfeitures aforesaid by fieri facias, elegit, capias or otherwise, as the case shall require."

Sect. 5. " Provided always, that this act shall not extend to any cottage to be made within a mile of the sea, or upon the side of such part of any navigable river where the admiral ought to have jurisdiction, so long as no other person shall therein inhabit but a sailor, or man of manual occupation to or for making, furnishing or victualling of any ship or vessel used to serve on the sea, nor to any cottage to be made in any forest, chase, warren or park, so long as no other person shall therein inhabit but an underkeeper or warrener for the good keeping of the deer, or other game or warren, nor to any cottage heretofore made, so long as no other person shall therein inhabit but a common herdsman or shepherd, for keeping the cattle or sheep of the town, or a poor, lame, sick, aged or impotent person ; nor to any cottage to be made, which for any just respect upon complaint to the justice of assize at the assizes, or to the justices of peace at the quarter sessions, shall, by their order entered in open assizes or quarter sessions, be decreed to continue for habitation for and during so long time only as by such decree shall be tolerated and limited."

32 HEN. VIII. c. 13.

[The bill for the breed of horses.]

Sect. 2. That no commoner within any forest, chase, moor, marsh, heath, common or waste ground, nor officer of the said forests or chases, nor any other person after &c., shall have or put to pasture into or upon any such forest &c., any stoned horse, being above the age of two years, and not being of the height of fifteen handfuls, to be measured from the lowest part of the hoof of the fore foot unto the highest part of the wither, and every handful to contain four inches of the standard, to pasture, feed or be in or upon any of the said forests &c., within any of the shires and territories of Norfolk, Suffolk, Cambridge, Buckingham, Huntingdon, Essex, Kent, South Hampshire, North Wiltshire, Oxford, Berkshire, Worcester, Gloucester, Somerset, North Wales, South Wales, Bedford, Warwick, Northampton, Yorkshire, Cheshire, Staffordshire, the county of the city of York, the town and liberties of Gloucester, the county of the town of Kingston-upon-Hull, the county palatine of Lancaster, the counties of Salop, Leicester, Hereford and Lincoln; nor shall put to feed or pasture any stoned horse being above the said age of two years, and not being of the height of fourteen handfuls, to be measured as abovesaid, within or upon any like ground lying or being within any other shire of this realm, upon pain of forfeiture of the said horse or horses which shall be so found in or upon any such ground, forest, &c. (By 8 Eliz. c. 8, s. 2 and 3, such horses in the Isle of Ely, and the counties of Cambridge, Huntingdon, Northampton, Lincoln, Norfolk and Suffolk need only be of the height of thirteen handfuls.)

Sect. 8. That the justices of peace &c., and all stewards of leets and law-days, in the same leets and law-days, shall have authority by this act to inquire of all defaults, contempts, omissions and offences contrary to the effects above written; and all presentments thereof to be found in any of the said leets or law-days shall be certified by the steward or deputy steward, or court-holder of the same leet or law-day, in the next general sessions of the peace to be holden &c., or unto the custos rotulorum of the same shire, within forty days next after that presentment made, which justices of the peace shall have power to hear and determine &c.; and if any such steward, deputy steward or court-holder embezzle or conceal any such presentment, or do not certify the same as is aforewritten, every of them so offending shall forfeit and lose for every such offence forty shillings (half to the king, and half to the person suing, &c.).

Sect. 9. That no person after &c., shall have or put to pasture any horse, gelding or mare, infect with scab or mange, in, to or upon any of the said forests &c., upon pain to forfeit for every horse &c., ten shillings, which offence shall be inquirable and presentable before the steward in every leet, as other common annoyances be; and the forfeiture thereof to be to the lord of the leet.]

33 HEN. VIII. c. 6.

[The bill for cross bows and hand guns.]

That it shall be lawful to all stewards and bailiffs in their several leets and law-days, to inquire, hear and determine every such offence, to be committed and done contrary to the tenor of this act; so that always no less fine than ten pounds be assessed upon every such presentment and conviction, the one moiety of such fine to be to the king, and the other moiety, the one half to the owner of the leet, and the other to the party that will sue for the same.]

33 HEN. VIII. c. 9.

[The bill for the maintaining artillery, and the debarring of unlawful games.]

Sect. 10. Aliens not to use long bows without the king's license; and that justices of assize &c., and of the peace, and stewards of franchises, leets and law-days, have power to inquire of all the premises in their sessions, leets and law-days, and hear and determine the same; and also by their discretion examine all persons lacking and not having bows, shafts and arrows according to the form therein aforesaid.

Sect. 18. That where any such forfeitures shall happen to be found within the precinct of any franchise, leet or law-day, then the lord of the same franchise, leet or law-day, to have the one moiety thereof, the other moiety to the person suing for the same.]

2 & 3 EDW. VI. c. 10.

[The bill for true making of malt.]

Sect. 4. That justices of peace in their sessions, and the steward in every leet, shall have full power and authority to inquire, hear and determine, as well by presentment of twelve men as by accusation or information of two honest witnesses, of, for and upon all the offences and forfeitures aforesaid, as well for the king as for the party that shall sue, procure or cause the same to be presented.]

2 & 3 EDW. VI. c. 15.

[The bill of conspiracies of victuallers and craftsmen.]

Sect. 3. That all justices of assize, justices of peace, mayors, bailiffs and stewards of leets, at all and every their sessions, leets and courts, shall have full power and authority to inquire, hear and determine all offences committed against this statute, and to punish or cause to be punished the offender, according to the tenor of this statute.]

7 EDW. VI. c. 5.

[The act to avoid the excessive prices of wine.]

Sect. 6. That justices of peace in their several sessions, and the steward in every leet, and the sheriff in his tourn, and every escheator, shall have full power and authority to inquire, by the oaths of twelve lawful men, of all offences perpetrated or done contrary to the form of this act.]

2 & 3 PHILIP & MARY, c. 8.

[The statute for the mending of highways.]

Sect. 2. That the steward of every leet or law-day shall therein have full power and authority to inquire, by the oaths of the suitors, of all the offences that shall be committed within the leet or law-day, against every point and article of this statute, and to assess such reasonable fines and amerciaments for the same as shall be thought meet by the said steward. And the steward of every leet and law-day shall make estreats (for which, by sect. 4, his fee to be 12d.) indented of all the fines, forfeitures and amerciaments, for the defaults presented before him; and shall deliver the one part thereof, sealed and signed by him, to the bailiff and high constable of every hundred, rape, lathe or wapentake wherein the defaults shall be presented, and the other part to the constable and churchwardens of the parish wherein the defaults were made, the same to be yearly delivered within six weeks after the feast of St. Michael the Archangel.]

4 & 5 PHILIP & MARY, c. 3.

[An act for the taking of musters.]

That all stewards of leets, law-days and liberties, at their leets and law-days, shall inquire, hear and determine every of the offences committed or done contrary to this act, within the precincts of their leet or liberty.]

18 ELIZ. c. 10.

[An act of addition unto the former acts for amending and repairing of highways.]

That stewards of leets and law-days, in their leets and law-days, shall hear and determine every offence, matter and cause that shall grow, come or arise by reason of this statute.]

23 ELIZ. c. 10.

[An act for the preservation of pheasants and partridges.]

Sect. 5. That justices of assize in their circuits, justices of the peace in their sessions, and stewards of leets, liberties and law-days, within their several jurisdictions, shall and may, by virtue hereof, hear, inquire and determine of all offences which shall be committed within the precinct of their liberties, jurisdictions or franchises, against the tenor of this act.]

1 [2] JAC. I. c. 22.

[An Act concerning tanners, curriers, shoemakers, &c.]

Sects. 32, 34, 35. Mayors, bailiffs, &c., and lords of liberties out of the circuit of three miles of the city of London (b), to appoint leather-sealers, and triers of tanned leather, under a penalty.

Sect. 50. That all justices of assize and gaol delivery, justices of peace, and stewards of franchises, leets and law-days, within their several precincts, jurisdictions and liberties, mayors, &c., shall enquire of all the premises in their sessions, leet or law-day, and hear or determine the same, and also by their discretions examine all persons suspected to offend this act.

Sect. 51. The steward of any manor, liberty or franchise immediately belonging to the king, shall have the like authorities and bear the like penalties as the lords of liberties (c).]

(b) See 1 Burr. 497, 498.

(c) Continued and amended by subse-

quent statutes, but repealed by 48 Geo. 3, c. 60.

21 JAC. I. c. 21.

[An Act concerning hostlers and innholders.]

Sect. 2. No hostler or innholder shall make horse-bread in his hostrey, nor without, but bakers shall make it, and the assize shall be kept, and that the weight be reasonable after the price of the corn and grain in the markets adjoining; and the hostlers or innholders shall sell their horse-bread, and their hay, oats, beans, peas, provender, and also all kind of victual both for man and beast, for reasonable gain, having respect to the prices for which they shall be sold in the markets adjoining, without taking any thing for litter.

Sect. 3. It shall be lawful for every hostler and innkeeper, dwelling in any town or village, being a thoroughfare, or a common passage, and being no city, town corporate or market town, wherein any common baker exercising the occupation of baking, and that hath been apprentice at the said occupation by the space of seven years, is dwelling, to make within his house horse-bread sufficient, lawful, and of due assize, according as the price of grain and corn shall be.

Sect. 4. If the horse-bread which any of the said hostlers or innholders shall make be not sufficient, lawful, and of due assize, according to the price of grain and corn as aforesaid; or if any of them shall offend in any thing contrary to this act; then the justices of assize, &c., justices of the peace, sheriffs in their tours, and stewards in their leets and law-days, shall have full power and authority to enquire, hear and determine the said defaults and offences of the said hostlers and innholders. And the hostler or innholder for the first offence shall be fined according to the quantity of the offence; and if, being once convicted, he shall again offend, for the second offence he shall be imprisoned for the space of one month; and if he shall a third time offend, being thereof convicted, he shall stand upon the pillory; and if he shall offend after the judgment of the pillory given, he shall be forejudged for keeping an inn again. (And see 32 H. 8, c. 41, repealed by this act.) (d)]

(d) N. B. The powers of the above acts are expressly confined to the steward as far as respects the jurisdiction given to the court leet.

But by the act of 31 Eliz. c. 7, "Against the erecting and maintaining of cottages," it is enacted [s. 6] that after the feast of All Saints then next coming, there should not be any inmate or more families or household than one dwelling or inhabiting in any one cottage, upon pain that every owner or occupier of any such cottage should forfeit to the lord of the leet, within which such cottage should be, the

sum of 10s. for every month that any such inmate or other family than one should dwell or inhabit in any one cottage as aforesaid: "And that all and every lord and lords of leet and leets, and their stewards, within the precinct of his and their leet and leets, shall have full power and authority within their several leets to enquire, and to take presentment by the oath of jurors, of all and every offence and offences in this behalf; and upon such presentment had or made, to levy by distress to the use of the lord of the leet all such sums of money as so shall be forfeited:

1 ELIZ. c. 17.

“An Act for preservation of spawn and fry of fish.”

“For the preservation hereafter of spawn, fry, and young breed of eels, salmons, pikes, and of all other fish, which heretofore hath been much destroyed in rivers and streams, salt and fresh, within this realm, insomuch that in divers places they feed swine and dogs with the fry and spawn of fish, and otherwise, lamentable and horrible to be reported, destroy the same, to the great hindrance and decay of the commonwealth: Be it therefore enacted by,” &c., “That no person or persons of what estate, degree or condition soever he or they be, from and after the first day of June next coming, with any manner of net, weele, but, taining kepper line, crele, raw, fagnet, trolnet, trimenet, trimboat, stalboat, weblister, seur, lammet, or with any device or engine made of hair, wool, line or canvas, or shall use any helingnet or trimboat, or by any other device, engine, cawtel, ways or means whatsoever heretofore made or devised, or hereafter to be made or devised, shall take and kill any young brood, spawn, or fry of eels, salmon, pike or pikerel, or of any other fish, in any floodgate, pipe, at the tail of any mill, wear, or in any straits, streams, brooks, rivers, fresh or salt, within this realm of England, Wales, Berwick, or the marches thereof; nor shall from and after the first day of June next coming, by any of the ways and means aforesaid, or otherwise, in any river or place above specified, take and kill any salmons or trouts not being in season, being kepper-salmons or kepper-trouts, shedder-salmons or shedder-trouts.”

Sect. 2. “And be it further enacted by the authority aforesaid, That no person or persons, of what estate, degree or condition he or they shall be of, from and after the said first day of June, by any of the means aforesaid, in any of the rivers or places above named, shall take and kill any pike or pikerel, not being in length ten inches or more; nor any salmon not being in length sixteen inches or more; nor any trout not being in length eight inches or more; nor any barbel not being in length twelve inches or more.”

Sect. 3. “And to the intent the said young fry, brood or spawn, may be preserved according to the true meaning hereof, be it further enacted by the authority aforesaid, That no manner of person or persons, from and after the first day of June next coming, shall fish or take fish with any manner of net, tramel, kepe, wore, hivie, crele, or by any other engine, device, ways or means whatsoever, in any river or other place above men-

And moreover, that it shall be lawful for the lord of every such leet, where such presentment shall be made, to recover to his own use any such forfeiture by action of debt in any of the Queen's Majesty's courts of record, wherein no essoin, protection or wager of law shall be allowed.” See sects. 1, 2, 3 and 5 of this act, ante,

1179, 1180.

[Vide also sect. 8 of the 1 Eliz. c. 17, post, p. 1186, which authorizes the *lord* of every leet to enquire of the offences mentioned in that statute, according to the usual course of amercements or other things enquirable in the court leet.]—(Ante, pt. 3, p. 692, 693.)

tioned, but only with net or trammel, whereof every mesh or mask shall be two inches and a half broad; angling excepted."

Sect. 4. "Provided nevertheless, and be it enacted by authority aforesaid, That in all such places where smelts, loches, minnies, bulheads, gudgions or eels, have been used to be taken and killed, that in all such places it shall be lawful only for the taking of smelts, loches, minnies, gudgions and eels, to use such nets, lepes and other engines, devices, ways and means, as heretofore have been used for the taking of the same; so that such person or persons using or occupying such nets or other engines as is last aforementioned, do not take, kill or destroy any other fish with the said nets or engines, contrary to the tenor and form above in this statute contained."

Sect. 5. "And be it further enacted, That if any person or persons, after the aforesaid day limited in this present act, offend in any of the points before rehearsed, contrary to the tenor, form and purport of any part of the same, that then every such person and persons so offending shall lose and forfeit for every time of his or their offence the sum of twenty shillings, and the fish so taken contrary to the tenor hereof, and also the unlawful nets, engines, devices and instruments, whatsoever they be, wherewith or whereby such offence shall fortune to be made, committed or done."

Sect. 6. "And to the intent that a perfect execution may be had of this present act, be it further ordained by authority aforesaid, That the Lord Admiral of England, and the Mayor of the City of London for the time being, and all and every other person and persons, bodies politic and corporate, which by grant or other lawful ways or means lawfully have or ought to have any conservation or preservation of any rivers, streams or water, or punishments and corrections of offences committed in any of them, shall have full power and authority by virtue of this act to enquire of all the offences to be committed and done contrary to the effect and true meaning of this act, within his or their such lawful rule, government, jurisdiction and conservancy, by the oaths of twelve men or more, and to hear and determine all and every the same offences committed within his or their such jurisdiction, conservancy, rule and government."

Sect. 7. "And that all such pains and forfeitures as shall rise and grow by the reason of any such conviction for any the offences aforesaid, shall be to the use of every of the said person and persons being no body politic or corporate, nor head of any body politic or corporate, before whom such conviction as is aforesaid shall be had, and to the use of every such body politic and corporate as heretofore have lawfully had any fines, forfeitures and amerciaments for any offence unlawfully committed or done in any such their jurisdiction or conservancies, upon conviction had before the head of any such body politic or corporate."

Sect. 8. "And that also the lord of every leet within this realm of England and Wales, or the dominions of the same, shall have full power and authority to enquire of all the offences contrary to the purport, tenor and form of this estatute, within the precinct of their said leet: such enquiry to be had in manner and form, and after such sort, as common amerciaments

or other things inquirable in their court leet, have been lawfully used and accustomed to be had and made."

Sect. 9. "And that upon every such presentment had in any court or leet, by the oath of twelve men or more, as is aforesaid, of any offence or offences made contrary to the tenor of this estatute; that then all such forfeiture above in this estatute limited and appointed for such offence shall be unto the lord of the said leet for the time being, to his own use for ever, and shall be levied in such manner and form as amerciaments for affrays committed within the precinct of such leet have been used and accustomed to be levied."

Sect. 10. "And if any leet after the said first day of June be kept within this realm of England or Wales, or the dominions thereof, and the steward of the said leet for the time being, or other for him, do not charge the jury sworn in such leet to enquire of all the offences done within the precinct of the said leet, contrary to the tenor and form of this estatute, that then the steward of the said leet to lose and forfeit forty shillings; the one moiety of which forfeitures shall be to the queen's majesty, her heirs and successors, and the other moiety to him that will sue for the same. And if any jury, sworn in any leet, and being charged to enquire of the offences committed within the precinct of that leet, do wilfully and willingly conceal and make default in presentment, or do not present the offence and offenders, that then it shall be lawful to the steward or bailiff of the leet, or his or their deputy for the time being, to impanel one other jury within the said leet, and to enquire of such concealment, default or non-presentment; and that upon such concealment, default or non-presentment found and presented, every of the said jurors which so did conceal, make default or not present, shall lose and forfeit for every such offence twenty shillings to the lord of the said leet, the same to be levied in manner and form as is above said for the other offences limited and expressed."

Sect. 11. "And it is further enacted by authority aforesaid, That if the offences above-mentioned touching the taking, killing or destroying of fish, or fry and spawn, be not presented at the leet where they shall be committed, within one year next after the offence committed, that the justices of peace in their sessions, justices of oyer and determiner, and justices of assise in their several circuits, shall have full power and authority to enquire thereof, and to hear and determine all the offences committed contrary to the tenor of this estatute."

Sect. 12. "Saving always to all and every person or persons, bodies politic and corporate, and every of them, all such right, title, interest, claim, privilege, and conservation and enquiry, and punishment of and for any the offences aforesaid, as they or any of them lawfully have and enjoy, or of right to have and enjoy by any manner of means, any thing in this act to the contrary notwithstanding. This act to endure to the end of the next parliament."

Sect. 13. "Provided always, that this act, nor any thing therein contained, shall not extend unto the fishing of the river or water of Tweed; nor to any river or water whereof the queen's majesty is answered of any

yearly rent or profit; nor to the owners, farmers and occupiers of the rivers Uske or Wye in the county of Monmouth, for any fish hereafter to be taken in any the rivers or waters before-mentioned and expressed; but that it shall be lawful at all seasonable time and times hereafter, for such as have or shall have any manner of interest therein, to take and fish the said rivers and waters, in such manner and form as heretofore hath been used and accustomed, not using any net or engine to the intent willingly to take, kill and destroy the spawn, breed or fry, breeding any kind of fish within the said several rivers or waters; this act, or any thing therein mentioned or contained to the contrary notwithstanding." [Continued by 2 Jac. 1, c. 15; made perpetual, except as to the last section, by 3 Car. 1, c. 4.]

9 HEN. III. c. 17.

"Holding pleas of the crown."

"No sheriff, constable, escheator, coroner, nor any other *our* bailiffs, shall hold pleas of *our* crown."

1 EDW. IV. c. 2.

"Justices of peace may award process upon indictments taken in sheriffs' tourns."

"Also whereas many of the king's faithful liege people, as well spiritual as temporal, by the inordinate and infinite indictments and presentments, as well of felony, trespasses and offences, as of other things, which of long time have been had and used within the counties of this realm, and taken before sheriffs for the time being in their counties severally, under sheriffs, their clerks, bailiffs and ministers, at their tourns or law days, holden before them severally in the counties, which indictments and presentments be oftentimes affirmed by jurors having no conscience, nor any freehold, and little goods, and often by the said sheriffs' menial servants and bailiffs, and their under sheriffs, by which indictments and presentments the said lawful liege people be attached and arrested by their bodies, and put in prison by the said sheriffs, under sheriffs, their clerks, bailiffs and ministers, to the great loss of their goods; and they so being in prison by the said sheriffs, under sheriffs, their clerks, bailiffs and their ministers are constrained to make grievous fines and ransoms, and levy of them great fines and amerciaments for the said indictments and presentments, in great hindrance and utter undoing of the said liege people; after which fines, ransoms and amerciaments, so rated and levied by the said sheriffs, under sheriffs, clerks, bailiffs and their ministers, the people aforesaid be enlarged out of prison, and the said indictments and presentments be embezzled and withdrawn: our said lord the king considering the premises, by the advice &c., hath ordained and established, that all manner of indictments and presentments that shall be taken hereafter before any of his said sheriffs of his counties for the time being, their under sheriffs, clerks, bailiffs or ministers, at their

tourns or law days before mentioned, they nor any of them shall have power or authority to attach, arrest or put in prison, or to levy any fines or amerciaments of any person or persons so indicted or presented, by reason or colour of any such indictment or presentment taken or to be taken before them or any of them, nor to make or take of any such person or persons so indicted or presented, any fine or ransom, but that the said sheriffs and their under sheriffs, clerks or bailiffs, and their ministers, shall bring, present and deliver all such indictments and presentments taken before them or any of them, in their tourns or law days aforesaid, to the justices of peace, at their next sessions of the peace that shall be holden in the county or counties where such indictments or presentments shall be taken before the said justices of such county or counties for the time being: And if any of the said sheriffs, under sheriffs, clerks, bailiffs and their ministers, do not bring, deliver and present all such indictments or presentments so taken before them and every of them in their tourns or law days, as before is recited, at such sessions of the peace, before the said justices of peace, that then all such sheriffs, under sheriffs, clerks, bailiffs and their ministers, and every of them that so shall fail in bringing, delivering and presenting of such indictments or presentments, shall forfeit to the king forty pounds at every time that they or any of them doth the contrary: And that the said justices of peace shall have power and authority to award process upon all such indictments and presentments, as the law doth require, and in like form as if the said indictments and presentments were taken before the said justices of peace in the said county or counties, and also to arraign and deliver all such person or persons so indicted and presented before the said sheriffs, under sheriffs, their clerks, bailiffs and their ministers, or any of them in their tourns or law days: And all such persons or person which be indicted or presented of trespass, shall make such a fine as shall seem lawful by their discretions: And the estreats of the said fines and amerciaments shall be enrolled, and by indenture be delivered to the said sheriffs, under sheriffs, their clerks, bailiffs or ministers, or some of them, to the use and profit of him that was sheriff in the said counties or county, at the time of such indictments or presentments taken. And if any of the said sheriffs, their under sheriffs, clerks, bailiffs or ministers, do arrest, attach or put in prison, or cause any fine or ransom to be taken, or levy any amerciamement of any person or persons so indicted or presented, by reason or colour of any such indictment or presentment taken before them at their tourns or law days above rehearsed, before that they have process from the said justices of peace, or estreats delivered out of the said indictments or presentments so brought, delivered and presented to them, that then the sheriffs which so do, shall forfeit an hundred pounds, the one half thereof to be employed to the expences of the king's house, and the other half to the party or parties which be or is indamaged, and he or they shall have therefore an action of debt at the common law, and like process as in an action of debt at the common law. And that the defendant or defendants in such suits or actions of debt, shall not be essoined, nor wage their law; and if he or they, or any of them against whom this action shall be taken, do offer or cast

any protection or other impediment, in retardation of the said suits or actions, that shall not be allowed unto him."

Sect. 2. " Provided always, that this present ordinance do not extend, nor in any wise be prejudicial to the sheriffs of the city of London now being, or which at any time hereafter shall be, concerning any indictments or presentments to be taken within the said city of London."

Sect. 3. " Provided also that this act extend not nor be prejudicial to any person or persons which hath grants of any fines or amerciaments by any letters patents of our said sovereign lord the king, or of any of his progenitors or predecessors, bearing date before the 10th day of December next after the beginning of this parliament; and *that this act and ordinance do not extend, nor be prejudicial to any person or persons having any liberties or franchises by any of the said letters patents, or in any other manner by prescription*: And that this ordinance be in his force, and begin to take effect at the fortieth day next after the 6th day of May next after the beginning of this present parliament, upon the which sixth day the said parliament was dissolved."

13 & 14 CAR. II. c. 12.

"An act for the better relief of the poor of this kingdom."

Sect. 15. " And whereas the laws and statutes for the apprehending of rogues and vagabonds have not been duly executed, sometimes for want of officers, *by reason lords of manors do not keep court leets every year for the makiny of them*: be it therefore enacted by the authority aforesaid, that in case any *constable, headborough or tithingman* shall die or go out of the parish, any two justices of the peace may make and swear a *new constable, headborough or tithingman, until the said lord shall hold a court*, or until next quarter sessions, who shall approve of the said officers so made and sworn as aforesaid, or appoint others as they shall think fit; and if any officer shall continue above a year in his or their office, that then in such case the justices of peace in their quarter sessions may discharge such officers, and may put another fit person in his or their place until the lord of the said manor shall hold a court as aforesaid."

11 GEO. I. c. 4.

"An act for preventing the inconveniences arising for want of elections of mayors or other chief magistrates of boroughs or corporations, &c."

Sect. 3. " And whereas in certain boroughs and towns corporate within that part of Great Britain called England, Wales and Berwick upon Tweed, the mayor, bailiff or bailiffs, or other chief officer or officers, is or are to be nominated, elected or sworn at a *court leet or view of frank-pledge, or some other court*, and by reason of the contrivance or default of the lord or his steward, or such other officer by or before whom such court ought to be held, in not holding the same, or by some accident, it hath happened and may hereafter happen, that no due nomination, election or swearing of

such mayor, bailiff or bailiffs, or other chief officer or officers, hath been or shall be had or made: be it further enacted by the authority aforesaid, that in every such case it shall and may be lawful to and for his majesty's Court of King's Bench, upon motion to be made in the said court, to award a writ of *mandamus*, requiring the lord or his steward or other officer, by or before whom such court ought to be held, to hold or cause to be holden such court leet or other court, and to do every other act necessary to be done by him in order to such nomination, election or swearing, at such day and time as shall be for that purpose judged proper by the said Court of King's Bench, and shall be appointed in such writ, or to signify to the said court good cause to the contrary, and thereupon to cause such proceedings to be had and made, as in other cases of writs of *mandamus* granted by the said court, for holding of any court; and of the day and time appointed in and by any such writ of *mandamus* for holding such court, public notice in writing shall, by such person as the said Court of King's Bench shall appoint, be affixed in the market place, or some other public place within such borough or town corporate, by the space of six days before the day so appointed: and where a nomination of persons in order to the election of any such mayor, bailiff or bailiffs, or other chief officer or officers, is to be made at such *court leet* or other court, in every such case, after such nomination made, all and every other act and acts necessary to be done in order to such election, shall be had, made and done at such assembly, and in such manner and form as the same ought to have been had, made and done, in case such election had been made upon the day next after the expiration of the time prescribed for such election by the charter or usage of such borough or corporation, according to the directions hereinbefore mentioned."

Sect. 4. " And be it further enacted by the authority aforesaid, that the mayor, bailiff or bailiffs, or other chief officer or officers, who shall be elected pursuant to the directions of this act, shall take the oath or oaths by law required at the time of his admission into such office, before such officer as shall preside at such election, in pursuance of this act, who is hereby authorized and required to administer such oath or oaths; and shall have the same privileges, precedence, powers and authorities in all respects, as any mayor, bailiff or bailiffs, or other chief officer or officers of the same city, borough or corporation, elected on the days or times fixed by charter or usage for that purpose, ought to have or enjoy."

Sect. 5. " Provided always, that no such election, nor any act done in order thereunto, shall be valid, unless as great a number of persons, having right to be present at and vote therein, shall be present at the assembly holden for such purpose, and concur therein, as would respectively have been necessary to be present, and concur in such election or act, in case the same had been made or done upon the day or within the time appointed for that purpose by the charter or usage of such city, borough or corporation, saving only, that the presence of the mayor, bailiff or bailiffs, or other chief officer or officers who ought to preside, shall not be necessary."

5 & 6 VICT. c. 109.

“ An act for the appointment and payment of parish constables.”

Sect. 21. “ And be it enacted, that after the passing of this act, no petty constable, headborough, borsholder, tithingman or peace officer of the like description, under any name of office, shall be appointed for any parish, township or vill within the limits of this act, except for the performance of duties unconnected with the preservation of the peace or with the execution of this act, at any court leet or tourn or otherwise than under the provisions of this act, or under the provisions of the said act of the third year of the reign of her present majesty (a), or of some act passed for the amendment thereof; but nothing herein contained shall be taken to prevent the appointment of special constables, or to apply to the city of London or the metropolitan police district, or to any borough which is within the provisions of an act passed in the sixth year of the reign of his late majesty, intituled ‘ An Act to provide for the Regulation of Municipal Corporations in England and Wales,’ or of any charter granted in pursuance of that act, or of any act made for the amendment thereof, or to any parish, town or place in which rates are or shall be levied for the payment of constables, under the provisions of an act passed in the fourth year of the reign of his late majesty, making provision for the lighting and watching of parishes in England and Wales, or of any local act specially applying to such parish, town or place, and that nothing hereinbefore contained shall be taken to apply to the county palatine of Chester.”

(a) *Viz. “An Act for the Establishment of County and District Constables by the Authority of Justices of the Peace;”* and see 3 & 4 Vict. c. 88, “to amend the same.”

END OF APPENDIX TO THE TREATISE ON COURTS BARON AND
COURTS LEET.

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- 31 Eliz. c. 7, "An act against the erecting and maintaining of cottages" 1179, 1180
- 32 Hen. 8, c. 13. [The bill for the breed of horses.] 1180, 1181
- 33 Hen. 8, c. 6. [The bill for cross bows and hand guns.] 1181
- 33 Hen. 8, c. 9. [The bill for the maintaining artillery, and the debarring of unlawful games.] *ib.*
- 2 & 3 Ed. 6, c. 10. [The bill for true making of malt.] 1182
- 2 & 3 Ed. 6, c. 15. [The bill of conspiracies of victuallers and craftsmen.] *ib.*
- 7 Ed. 6, c. 5. [The act to avoid the excessive prices of wine.] Page 1182
- 2 & 3 P. & M. c. 8. [The statute for the mending of highways.] *ib.*
- 4 & 5 P. & M. c. 3. [An act for the taking of musters.] 1183
- 18 Eliz. c. 10. [An act of addition unto the former acts for amending and repairing of highways.] *ib.*
- 23 Eliz. c. 10. [An act for the preservation of pheasants and partridges.] *ib.*
- 1 [2] Jac. 1, c. 22. [An act concerning tanners, curriers, shoemakers, &c.] (See 48 Geo. 3, c. 60.) *ib.*
- 21 Jac. 1, c. 21. [An act concerning hostlers and innholders.] 1184
- [Reference to 31 Eliz. c. 7, "against the erecting and maintaining of cottages"] *ib.*, 1185, n.
- 1 Eliz. c. 17, "An act for preservation of spawn and fry of fish" 1185—1188
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- 13 & 14 Car. 2, c. 12, "An act for the better relief of the poor of this kingdom" 1190
- 11 Geo. 1, c. 4, "An act for preventing the inconveniences arising for want of elections of mayors or other chief magistrates of boroughs or corporations," &c. *ib.*, 1191
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